

COUNCIL MEETING

MAY 9, 2012

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, May 9, 2012 at 9:30 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable KipuKai Kualī'i
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Chang, and unanimously carried.

CONSENT CALENDAR:

C 2012-139 Communication (04/20/2012) from the Mayor, transmitting for Council consideration and confirmation, the Mayoral appointment of Clifton J. Miranda, to the Fire Commission – term ending 12/31/12: Mr. Kualī'i moved to receive C 2012-139 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-140 Communication (04/19/2012) from the Mayor, transmitting for Council consideration and confirmation, the Mayoral appointment of Benjamin E. Lizama, Jr., to the Board of Review – term ending 12/31/12: Mr. Kualī'i moved to receive C 2012-140 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-141 Communication (04/30/2012) from Vice Chair Yukimura, transmitting for Council consideration, a proposed Charter Amendment relating to the terms set for County Councilmembers: Mr. Kualī'i moved to receive C 2012-141 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-142 Communication (04/17/2012) from the Chief of Police, transmitting for Council consideration, a proposed amendment to the Kaua'i County Code 1987, as amended, for the following:

- Establish a permitting system for residential alarm systems.
- Allow the Kaua'i Police Department (KPD) to assess service charges for permit issuance and for responses to repeat false alarms.
- Allow KPD to obtain and maintain accurate contact information for holders of permits for residential alarm systems.

Mr. Kualī'i moved to receive C 2012-142 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-143 Communication (05/01/2012) from Councilmember Kualii, providing written disclosure on the record of a possible conflict of interest relating to the "YWCA – Family Violence Shelter" and "YWCA – Sexual Assault Treatment Program" line items contained in "Other Services" (Account No. 001-0901-512.30-00) in Bill No. 2431, due to his employment with the YWCA: Mr. Kualii moved to receive C 2012-143 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-144 Communication (05/01/2012) from Councilmember Chang, providing written disclosure on the record of a possible conflict of interest relating to the "Kaua'i Recycles Program" and "Recycling Promotions" line items contained in "Other Services" (Account No. 208-2033-641.30-00) in Bill No. 2431, due to his position as the Owner of Wala'au Productions which tapes and airs advertisements for Garden Isle Disposal: Mr. Kualii moved to receive C 2012-144 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-145 Communication (05/01/2012) from Councilmember Chang, providing written disclosure on the record of a possible conflict of interest relating to the "Tourism – Kaua'i Marathon" and "Tourism – Kaua'i Marathon/Iwaki Marathon" line items contained in "Other Services" (Account No. 001-0901-512.30-00) in Bill No. 2431, due to his position as the Owner of Wala'au Productions which tapes and airs footage of the Kaua'i Marathon: Mr. Kualii moved to receive C 2012-145 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-146 Communication (05/02/2012) from Vice Chair Yukimura, transmitting for Council consideration a proposed Charter Amendment to remove the provision allowing the Mayor, during the annual budget setting process, to submit a "second proposed annual budget" (referred to as the Mayor's Budget Modification) as provided for in Section 19.02(A) and Section 19.07(A) of the Charter of the County of Kaua'i: Mr. Kualii moved to receive C 2012-146 for the record, seconded by Mr. Chang, and unanimously carried.

COMMUNICATIONS:

C 2012-147 Communication (04/23/2012) from Council Chair Furfaro, requesting the presence of Mr. Scott Matsuura and Mr. James Pacopac to provide an update on the 2012 Legislative Session: Ms. Yukimura moved to receive C 2012-147 for the record, seconded by Mr. Chang.

There being no objections, the rules were suspended.

JAMES PACOPAC: Good morning again Chair Furfaro and members of the Kaua'i Council. My name is James Pacopac representing SPJ Consulting and my partner here is Scott Matsuura. We are giving you our final legislative report today. I think you received three (3) documents – our measure tracking reports. One (1) of them is 2012 Council Proposals... you did not receive it?

Chair Furfaro: For future reference, where might you have sent your report and we did not have copies prepared?

SCOTT MATSUURA: Actually the reports were sent to us by your staff. Ashley sent it to us something that was going to be passed out to the members, so we all have the same report that we would be going over.

Chair Furfaro: I want to make sure I understand what Ashley sent to you were questions that might come up from the Council?

Mr. Matsuura: Yes, as well as she sent us three (3) sets of status reports.

Chair Furfaro: And the status reports came from you?

Mr. Matsuura: Came from the system, but basically it came from the staff, they printed it out.

Chair Furfaro: Did you send us a report?

Mr. Pacopac: This is the report.

Chair Furfaro: Okay, so it is the status off of the web?

Mr. Pacopac: Yes.

Chair Furfaro: And we have that.

Ms. Yukimura: You mentioned three (3) documents?

Mr. Matsuura: Yes.

Ms. Yukimura: Okay, so I think one (1) is being passed out which is a tracking report.

Mr. Matsuura: There were three (3) different tracking reports. One (1) with the County package, one (1) with the Bills pertaining to the HSAC package, and the last report was two (2) Bills that were Council proposals.

Ms. Yukimura: We have one (1) of the three (3) but we are missing...

Chair Furfaro: In your packet, you have the two (2) Bills in the middle of the packet, in the very back of the packet; Ashley has the HSAC tracking copies. In the front of the package were pieces of interest to various members.

Mr. Pacopac: We have ours, we have it separated. Yours are all in one with three (3) different items.

Chair Furfaro: You continue to have the floor.

Mr. Matsuura: How did you want to go through this? Did you have specific questions on Bills and status?

Chair Furfaro: Why don't we start this way, as Mr. Rapozo is the Chairman of HSAC, I will let Mr. Rapozo have the floor first, then we will go

to the middle report of which there are items that are close and dear to Councilwoman Yukimura and I will give her the floor second, and then for the first portion of the report, we can have some general commentary because I would like to comment on some of these items.

Mr. Rapozo: The HSAC package we had and it is going to be showing up at our HSAC meeting at the end of the month as far as the discussion but if you folks want to go briefly... what I suggest is just the Bill number, the title and the status and if any Councilmembers have questions on the specific Bill, they can ask. I do not foresee spending a long time on Bills that have died so if you can start with SB2046 and give us a brief status.

Mr. Matsuura: Senate Bill 2046, Traffic Infractions. This Bill was intended to move the revenues from State to the Counties. The related Bill is House Bill 1749, the next Bill in line. House Bill 1749 was the only Bill that actually had hearings and went through the process. The Bill did not make it this session, and obviously anything that moves State revenues to the County would have had a hard time. Both Bills did not make it.

Mr. Rapozo: Okay. So Senate Bill 2046 and companion Bill – House Bill 1749 both failed, right?

Mr. Matsuura: Yes. Senate Bill 2047 and its companion 1750 on Affordable Housing Projects, increasing the time for review for affordable housing projects, moving the deadline from forty-five (45) days to sixty (60) days. Again, Senate Bill 2047 was a measure that had hearings; neither measure passed this session.

Mr. Rapozo: Again, just for the benefit of the public, this Bill was to allow the Counties to have fifteen (15) more days of review time of these permits, on these applications. Again, I believe this was on the HSAC package several years and it just never makes it; the Administrations actually opposing the Bill. The Housing Directors opposed it and we will just keep on trying, I guess.

Mr. Matsuura: Interesting for the Councilmembers information, Hawai'i County Office of Housing actually opposed the Bill as well, so it was kind of an interesting twist on something that was in the HSAC package which supposedly had support from all the islands.

Mr. Rapozo: Even Hawai'i County Council?

Mr. Matsuura: The Office of Housing, Community Development.

Mr. Rapozo: I believe Kaua'i opposed it too, I thought I remember testimony from the Kaua'i Housing Agency in opposition. The Hawai'i County Council better not had opposed this...

Mr. Matsuura: Senate Bill 2048 and House Bill 1751 Board Representation on the Employee's Retirement System. Again House Bill 1751 was a Bill that was heard, again neither Bill passed.

Mr. Rapozo: That is disappointing as well. I guess we need to see how our Kaua'i delegates voted, but that is disturbing because all we

were asking was for Kaua'i representation on the Board. A lot of decisions that are made at that level have a direct impact on the County.

Ms. Nakamura: Do you have any thoughts or insights on what you observed with respect to this Bill?

Mr. Matsuura: In trying to watch the Bill, we are not exactly sure how we got input in the Bill, but the Bill originally started out with adding a person and the County picking up the fees and expenses related to those individuals; however, the last draft that came out of House Finance actually removed that section. Again, I do not know where the comment came from, but it does report that there was comment regarding or question regarding why in this instance the County would pick up just that share when the rest of the people, the costs are picked up by the State, the Board itself. That could have been one (1) of the reasons why the Bill ended up that going anywhere, because again it increases the cost for the particular body. Again it is a finance kind of thing where rather than the County picking up the cost or expenses for the Board member, we revert it back to the Board and the State.

Ms. Nakamura: In the future, do you think if that issue is addressed that there would be willingness to... how much would that be?

Mr. Matsuura: In all honesty, I do not know, but there has been a whole bunch of other questions.

Ms. Yukimura: I think Councilmember Nakamura's question is good because we need to know what is behind the resistance of the legislature to these Bills. The way we find out is by talking to the people who oppose it, but I think it could upset the balance of power on the Board and that is a very big issue, I do not know what the balance of power is right now, someone has to analyze that. That is likely to be one (1) of the reasons and I am concerned that if the main function of the Board is to ensure proper investments handling of this trust fund, then they might be concerned about expertise of whoever the County member is – representative, there might be all kinds of concerns that we really, if we want success of this Bill or our main idea of getting some kind of representation or some kind of say, we need to do some homework.

Chair Furfaro: Let us give the floor back to Councilmember Nakamura. I think Vice Chair Yukimura's comments about qualifications and criteria for those are well taken, but you still have the floor.

Ms. Nakamura: Given that, can we get the testimony in opposition to this Bill so that we can have a better understanding of the concerns raised and if you have any strategies for how to do it differently next year – we should not give up.

Mr. Matsuura: Yes.

Mr. Rapozo: I just want to say, I am not sure what our contract with you is at the current time. Obviously I am not sure but we will address that and we will definitely address that in the upcoming budget. In fact, I agree a hundred percent that what I would like to see at the end of the session is basically some hints on how we can be successful next year. Some of these traffic fines, as long as Mr. Souki is there, it is not going to happen and that is just the

reality of it, we know. We know that going in, but some of these other ones like these County Representation on these Boards, to me makes no sense. Especially since the Governor would have had the ability to say yes or no anyway to that specific individual, so that I agree we need to get a report but I want to make sure it is encompassed in your contract as well.

Mr. Matsuura: That is fine.

Mr. Rapozo: Any other questions on 1751 and I am assuming the same of 2049 and 1752?

Mr. Matsuura: Yes.

Mr. Rapozo: So your report would be the same?

Mr. Matsuura: Yes.

Mr. Rapozo: We will definitely research the opposing testimony and figure out what we can do better the next time.

Ms. Yukimura: One of the questions I think we would need to look at if our goals are to get these things passed is, what is really our goal and can we achieve it in another way besides representation? What if we had a requirement that something had to be approved by all Counties before it took effect? That would be kind of unyielding too but there are other ways besides representation and we have to be real clear as HSAC and all the Counties – or do we want proper functioning of this Board? Do they have the proper criteria, the proper checks and balances – that might be also a concern and it may come in different forms.

Mr. Rapozo: Liability Bills 2050 and House Bill 1753.

Mr. Matsuura: Again, on House Bill 1753 was the vehicle that had hearings and actually moved along. Again, both Bills died and I guess the reason that it was given to hold the Bills back was that those are Task Force that is supposed to be taking a look at the liability issues, how things are being handled. There is supposedly a whole bunch of rules or procedures that is supposed to be instituted by the Counties as well as DLNR on safety. I think they are waiting for all of those things to happen. The deadline for that entire task to be completed was 2014, so this issue was pushed off until that time.

Mr. Rapozo: We bought a year – we did not buy a year, we already had the year.

Mr. Matsuura: Right.

Mr. Rapozo: And we need to work really hard this next year to remove that Sunset date because this could be really devastating to the Counties, and we will definitely work hard going forward. We need to get this Sunset removed and we need to inform the Counties that protection so we can really protect our residents and visitors. Again, I am confused with this one (1), I thought this one was a no brainer, I really did. I spoke to quite a few legislators and I do not know what happened. We rely on you folks to talk to these guys and have a few beverages and – non-alcoholic, of course... and find out what is really driving these

decisions, because it is a no brainer, and we just need to work hard on this one (1) here. We will pursue moving forward on this.

Ms. Yukimura: Is this the Attorneys that are opposing it?

Chair Furfaro: Right.

Ms. Yukimura: It is the lobby of...

Mr. Rapozo: Mr. Toyofuku.

Ms. Yukimura: Plaintiff Attorneys who want the right to sue the Counties and State for huge amount of moneys, make a good contingency fee off of it. There is the issue of making sure we do not shield ourselves from liability for doing egregiously wrong things, right? I thought there were some protections within this Bill?

Mr. Matsuura: There was supposed to be and like I said part of it was the Plaintiff's Attorney were there, they opposed the Bill, but at the same time the issue that came forth and even they did agree, I think that if some of these other things are completed based on the past agreements and what supposed to be set up for a safety standpoint that it may Sunset.

Ms. Yukimura: So what you are saying is that the people who were fore holding this off felt that there are some things for putting in a safe system or that agencies need to do certain things to ensure that we are covering our responsibility as State and County government to keep people safe on our lands or at the beaches or whatever and if that is in place, then there is more willingness to give this kind of coverage?

Mr. Matsuura: Yes.

Ms. Yukimura: Okay. That is understandable and we have had some...

Mr. Matsuura: The Counties have shown that a lot of those things, the Counties have actually gone forward and done that. I think there were some concern with some of DLNR services and things like that.

Mr. Rapozo: Maybe staff can take a note because that is the requirement of the Bill. The conditions for the task force and so forth were conditions of the Bill that are already in place that sunsets next year. Staff, can you prepare letters to all the agencies and find out where we are at on the status of the conditions of the Bill so that we can at least stay on them. I am not so convinced that if we meet those conditions that the plaintiff's attorneys and lawyers are going to say, "okay now we can see." I think it is going to be a very tough fight going forward, but we need to start preparing our legislators anyway that even if... because we cannot rely on DLNR, we cannot rely. We can take care of our County issues, but nonetheless, if DLNR is holding the process up, we got to make sure that we at least get an annual extension on this sunset so that we are protected, and that is my main concern - we do not let it sunset and then have to go fight again to get the Bill in place, which we did years ago. If I am not mistaken, this is the first HSAC package bill that ever passed years ago and I would hate to see it disappear because DLNR failed to do their part or someone else. We will follow up on that

and start preparing for next session because this is a very important Bill. Although we are still protected until 2014, that date will come up soon and if that thing sunsets, we are in trouble. Thank you. Next, the TAT.

Mr. Matsuura: There are two (2) Resolutions, SR 3 and HR 4, urging the Governor and the legislature to preserve the Counties' share of the TAT.

Mr. Bynum: It is my understanding that during this session there was not any serious proposal to hit the Counties' TAT, is that correct?

Mr. Matsuura: Correct.

Mr. Bynum: So the Resolution passed, but there really was not intent to change the current status quo?

Mr. Matsuura: Not like last year.

Mr. Bynum: Which is that it is capped for three (3) more years?

Mr. Matsuura: Two (2) or three (3) years. So there was no movement on the TAT this year except this Resolution that urged the Governor.

Ms. Yukimura: Part of the reason, don't you think is the good work that was done...

Mr. Matsuura: The previous years.

Ms. Yukimura: The previous year when the Counties really united and gave the rationale for some of the TAT coming to the Counties, so thank you for the good work in that.

Mr. Matsuura: TAT never came out on any of the discussions, in any of the backrooms or anyplace.

Ms. Yukimura: It was pretty much decided upfront that they were not going to touch that.

Mr. Matsuura: We are going to wait maybe next year to take a look at it again.

Ms. Yukimura: Yes.

Mr. Matsuura: Well we got two (2) more years.

Ms. Yukimura: We should always be prepared but it is at the end of the three (3) year period that we need to...

Mr. Matsuura: We should be gearing up again.

Mr. Rapozo: Well but let us also remember that that three (3) year is not a guarantee.

Mr. Matsuura: That is right.

Mr. Rapozo: I think the Chair may have a little different take on there was no discussion on TAT. Mr. Chair.

Chair Furfaro: One of the really good points was at the first session of the Finance Committee, all four (4) Council Chairmans of the Counties spoke in keeping that fair share and made willingness to discuss what happens in year three (3). I saw it a little different from Senator Kim. From that very first conference committee that I gave testimony to imply that we are all fine and well is not my take on it and I will tell you why I see that. How much money was put back in the State's reserve?

Mr. Matsuura: None.

Chair Furfaro: Zero. How much money was put back into the employee's retirement system?

Mr. Matsuura: None.

Chair Furfaro: Zero. How many fund balances did they tap for all the money? All of them. So I want to make sure you are hearing what I am saying here, I think 2013 is not a year to give a lot of concern to that. Year three (3) knowing that no additional contributions were made to the State Employee Retirement Fund and you are hearing from a Council that funds our liability one hundred percent. All the funds – hurricane, special rainy day funds – they were all tapped.

Mr. Matsuura: Correct.

Chair Furfaro: No money was put back.

Mr. Matsuura: Correct.

Chair Furfaro: So putting those things on the radar screen, I just wanted to make sure we understand, we may have stole second base for this year but we still got a long way to go to cross the plate over the next two (2) years. So I speak a little bit more caution and I think having all four (4) Counties, four (4) Mayors, four (4) County Chairs all speaking to the Legislators in Ways and Means went a long way to keeping us safe this year. Mr. Rapozo, I just had a little different take on it.

Mr. Rapozo: Yes, I think yours and mines are pretty similar.

Mr. Chang: Jimmy or Scott, can you just, for the viewing audience just inform what HSAC stands for and also we have been making reference right now to the TAT, can you explain what is the TAT so the viewing audience can understand what is HSAC and what is TAT.

Mr. Rapozo: HSAC is Hawai'i State Association of Counties and that is our deal; TAT is obviously is the Transient Accommodations Tax.

Mr. Pacopac: The Association is made up of all the County Councils on every island. They send a representative to sit on the HSAC Committee; Mel is your representative for Kaua'i. They pursue legislation that would benefit all of the Councils, so any of the Bills that come out for the HSAC is all agreed upon by every Council and that is their push. Every Council agrees that the Bill that they are pushing will help their entire Counties – that is the Hawai'i State Association of Counties. The TAT is the Transient Accommodation Tax, which is collected from our visitors at the hotels and... what year was that law passed on that TAT? It was in the 80s, right? That there is a percentage of the tax from the tourism that goes into the transient accommodation tax, and that tax money when that was formed gave percentages to the different Counties based on your populations. Of course Honolulu has the biggest share. Kaua'i – you guys get a little bit but at least it helps the County.

Chair Furfaro: I would like to add to that to make sure we are clear; the TAT tax went up from four percent to seven percent to nine percent.

Mr. Pacopac: Correct.

Chair Furfaro: The transient accommodation tax. The TOT is charged on timeshare and it is collected in the common area fees, right. And then it is also important to know, before they distribute it for the County, they also take their share for marketing, they also take their share for the operation of the Convention Center, and then the balance is split. Honolulu gets forty-four point one percent, Kaua'i gets fourteen point two percent. Big Island and Maui have their allocation, so that is how it is structured.

Mr. Pacopac: That is correct.

Mr. Bynum: As long as we are going to talk about the TAT, I want to put some things on the record. First, I agree with Council Chair and Mr. Rapozo that the County Mayors and the County Councils have aggressively tried to educate the Legislature and the public about the TAT and why we feel that we are entitled to a portion of that. We need to continue that. I asked the question of whether there was any serious threat to it this year, the answer was no, and that I think is because we have been successful in educating people about the importance of Counties. For the County of Kaua'i, I just want to say that we are impacted by visitors as a percentage more than any County because you look at a hundred people on Kaua'i, twenty of them are visitors – you look at a hundred people at any given minute. You look at a hundred people on O'ahu and five (5) or six (6) of them are visitors, so as a percentage of our population, visitors use County services, they use lifeguards, they drive on our roads, they have fire calls and so forth. What the legislature when they were saying they were going to take it all in the first year, they were saying to the people of Kaua'i, you know all those visitors that you host and use County services, they are going to pay nothing – you taxpayers of Kaua'i, you get to pay it. And we only have sixty-eight thousand people to pay it and we are hosting visitors at a higher percentage of the defacto population. This is really critical, it is not a lot of money from an O'ahu perspective, but it is like thirteen and a half million dollars in our County budget which is a significant portion. Right now, without that cap I think it would have been sixteen or seventeen million this year, so hopefully the Legislature is going to look at extending that cap in the future and we need to remain diligent to make our point of why the Counties are entitled to a portion of that. I hope you agree because you are our representatives.

Mr. Pacopac:
no longer WAM Chair.

Yes we do. One (1) note that Donna Kim is

Mr. Bynum:

And that is significant.

Mr. Pacopac:

That is a big difference.

Mr. Bynum: Because Senator Kim was the one who said Kaua'i we will give you sales tax instead, right? And so basically it is saying to the people on Kaua'i, not only we are going to hit you with funding the visitors' impact on our services, we are going to do it with the most regressive kind of tax that there is that hurts low and moderate income people.

Mr. Pacopac: Senator Kim is hard nose on a lot of these issues but now she is the Tourism Chair, so she is hard nose on maybe getting more money from the tourist.

Mr. Rapozo: That is true but it is always a threat, the TAT is always a threat, and I am like the Chair, I am not so comfortable that we are not going to have to – or the TAT is going to be in jeopardy next year. As the President of the Hawai'i State Association of Counties; I have the opportunity to speak to a lot of legislators in the hallways, and it is not that rosy. They are looking for money too, and Kaua'i gets a big chunk of the TAT. Yes, fourteen percent is a small amount but compared to what we put in, it is relatively significant and the legislators know that. Donna Kim is one of many, Senator Kim is one of many that is not happy with that and they talked about reallocation of TAT again to the islands, they talked about the General Excise Tax authority to the Counties. This was a discussion and this year our Mayor did not join in on the County's package, he did not agree to put the TAT matter on our County package, so it is on our HSAC but it was not on our County package. That does not send a really strong message out to the Legislature, it was not, and we were right here, and I could not believe it. I was shocked, like why wouldn't you? I am not sure if it was on the HCOM, I do not think it was on the HCOM package as well – the Hawai'i Conference of Mayors, and I do not know why. We did an HSAC briefing with the legislators and I do not know if any of you were there, I think Mr. Kualii was there. I got hammered by Senator Kim, and then I went to testify at the Conference Meeting, I got hammered again. So, it is not that "oh no, it is not a problem" and we are on year one (1) of three (3), because I am not comfortable that next year we will have what we have this year. Somebody has to make that up and thirteen million is a lot of money and I guess as we move forward with the new year, we got to get a better handle on how our legislators are feeling about TAT and we need to know well in advance what the changes are. The last thing we want to do is to go and upset the legislators as far as what we do on Kaua'i; I am not going to get into that debate here today, but I heard it. I heard it many times about "you on Kaua'i, you guys want money from the State?" But that is just another dialog, but my point is this, this is one in addition to the liability Bill that we got to really stay on because it will affect our Counties and we have a great delegation here of representatives and a Senator that we got to rely on to make sure that Kaua'i – I feel sorry for them and I told them that at the conference. What do they tell their colleagues? But they represent us well, but it takes a lot more than our delegation to preserve TAT, and through HSAC and the Counties and through HCOM, we need to make a united effort. We cannot go HSAC without the County, it makes no sense, it shows a very serious disconnect. Going forward again, I am not sure how your contract is written but should you be

representing us again going forward, I would ask that we pay a lot of attention on those Bills and get a heads up so we can be prepared to address that matter when it comes up.

Mr. Bynum: Just want clarification briefly that the TAT is not money that comes from the State, it is money that comes from visitors. It does not come from hotels and resorts, it comes from visitors. I just wanted to make that – because I think people get confused about that.

Mr. Rapozo: Well Mr. Bynum, I am just going to say as I said it many times, regardless of where it comes from, the State signs the check and if they do not sign the check, we do not get the money – I do not care where it comes from. We need to be more focused on working with the legislature to retain those funds. It is not our money either, it is the State's money.

Ms. Yukimura: I think we all agree that this core amount of money that comes from visitor tax is really important. To me, it is just a concern about the State taking away this core piece of money but it is also about us being entitled to any growth and we are seeing tourism coming back and that cap is stopping the Counties. There is a lot of work to be done on continually advocating our share.

Mr. Rapozo: Again, you do not do it by saying things like the State Legislature is irresponsible and you do not do things like spending money on Kaua'i and then begging the State for the money. I think we got to be very strategic going forward and making the State understand that we definitely need that money. That is just the reality of life. The other big component that the TAT was not taken away this year, it is an election year for many of those representatives at the Capitol. It would be foolish for them to say "we are going to take all TAT" and then have to tell the people, I want you to support me. Next year is not an election year for them. So let us call a spade a spade and deal with the reality of life.

Chair Furfaro: I think we had a lot of dialog and my comments are that every year we have to go lobby for but I want to particularly point out to Vice Chair Yukimura's comment, it is capped now. The people understand at our peek, we got sixteen point one million dollars then we got fifteen, seven, then we got fourteen, nine and now even if occupancy improves, the ADR improves – the Average Daily Rate, the nine percent for us is capped at the thirteen million, and so that is found money from the State, but it is going to be an ongoing lobbying effort by the Counties as a unit, and I just want to say that I appreciate what you folks do for us in that area. Thank you very much, but maybe we should move on.

Mr. Rapozo: Vice Chair Yukimura, on the measure tracking report on the Council proposals dealing with Senate Bills and House Bills that deal with energy conservation on solar water heater, so you have the floor Vice Chair.

Ms. Yukimura: This was a Council package and it is the Bill that would have required people who wanted a variance from the solar water heating requirement to be the end owner being the applicant that would have not allowed contractors and developers to apply for the variance from solar water heating because we wanted the person who was going to pay more eventually, to be

the one to apply for the variance, and it morphed into a Bill that gave the application process to the Counties and did away with the requirement to have the end owner applied. So, it failed basically. Even if it would have passed, it would have failed but it did not get through passage. I think we have some work to do as a County, I hope to propose it for the HSAC package for next year and get the Mayor's support. I want to point out that in Kekaha where the proposal is to use community benefits money to do photovoltaic on all the houses – general concept is a good idea but if you do not put solar water heating on first, you are not going to the highest return on investment. It is far cheaper and far easier to address your water heating bill with a solar water heater than a photovoltaic system and this just points out – this is a (inaudible) in Kekaha – they are proposing to give everyone a photovoltaic system but if you do not have the solar water heater. First, it is not going to be the maximum help to the residence there and this is what this Bill is trying to avoid by requiring solar water heating on new houses when they first come up. I do not have any questions at this time. I appreciate your tracking on this Bill and we will just go back next year. Thank you.

Mr. Bynum: I have a comment. I have been looking at the MLS listing on Kaua'i and we have new homes that developers are developing that do not have solar water heating that clearly – could not be more clear not the intention of this Bill that did pass – so it is an ongoing concern. When you build a home and you put it on the market without following this law, there is a problem. If you build your home for yourself, the exemption was intended for that. But the law was pretty clear to me and I still cannot believe that, I have a difficult time thinking administratively they cannot follow the intent of the current Bill but apparently it is not happening because I see these new projects coming online. Thanks for your work on this.

Ms. Yukimura: Putting solar water heating on single family houses in one of the simplest, cheapest way to move toward energy self sufficiency in our State and that is what this Bill is trying to do, so we will keep working on it.

Chair Furfaro: So we have finished that section that deals with the Council's proposals. I will just touch on the tracking report for the County that the County packages, give us a quick update on the Aquatics Bill – there are two (2) in the Senate and two (2) in the House – the Aquatics Life Resolution.

Mr. Matsuura: There were two (2) House measures. One (1) was House Bill 1780 and the other was Senate Bill 2042, there were two (2) Senate Resolutions both the concurrent Resolution as well as the Resolution on Aquatic Life Resolution which prohibited the sale of aquatic life for aquarium purposes. There was a penalty provision, many required DLNR – Division of Aquatic Resources to review the program and submit reports back to the Legislature. None of those measures had any hearings and so all them died.

Chair Furfaro: Well you know the County of Kaua'i did pass their Resolution and I was just flabbergasted there was a TV piece yesterday on the news. We borrowed four hundred thousand dollar candy stripe tropical fish from (inaudible) in Northern New Zealand to display in our... and I could not believe that the one fish was documented as four hundred thousand dollars but it is now in display and I think that just really highlights the sensitivity to our tropical aquatic life and both are finish. These I touched upon already, the County packages regarding the retirement systems, I think I just want to stress to you again for us, we are a County that fully funds it and this is a pretty sizable amount that we put

within the system and also the employee health benefits. I guess we need to continue to work with our legal people on making sure that if we fully fund these particular liabilities that we are somehow assured that this is money in our account and it is not distributed to an overall magic pot for all people. There is one (1) Bill here that I think it is important to know about but I do not see it on the chart when I go through it – what happened to the developer's home credit that gave housing credits to build on Department of Hawaiian Homelands?

Ms. Yukimura: It was Senate Bill 3025.

Chair Furfaro: And it was being pushed by the Big Island.

Ms. Yukimura: Maui.

Chair Furfaro: Is that finished and did it get approved?

Ms. Yukimura: It did.

Chair Furfaro: So how do we find ourselves managing that? I am rather concerned that how this is going to be managed, again here is the State in my opinion kind of overreaching on controls that should be at the County level in some respect, so is there anything you can tell us about this?

Mr. Matsuura: I do not have the notes on the Bill.

Chair Furfaro: I would like to turn over the floor then because I learned just about it in watching it on the screen, but I think we all need to educate ourselves a little better on this one.

Ms. Yukimura: Senate Bill 3025 was not in any package. It was a Bill that emerged that we had to respond to because it affects our housing program on Kaua'i. I am proud to say that our Housing Agency was very active in tracking it. Basically, the Bill and now the law allows DHHL to commandeer housing credits that the County has done as part of its inclusionary housing policy and put it on DHHL lands without any of the restrictions to income or to location that were tied to the County credits. Where the County, for example, has said to a developer "you owe us twenty-five units of housing, affordable housing ranging from eighty percent below or hundred and twenty and below, whatever our delineations are, DHHL can ask for those credits and require the developer to then build housing on DHHL lands.

Chair Furfaro: I did offer testimony against that piece. I think there was a couple of us did, but it was something that was tied to the Big Island but more importantly, I am not familiar with the details of this process. Are they going to be treating those in the Hawaiian community with some priorities when they are on DHHL lands? What happens to the tax base because right now when people do build on DHHL lands, they can qualify for the minimum tax, there are so many moving parts here, so it is certainly worth us looking into and finding out how do we manage that criteria? I just think it is a little overreaching to the County unfortunately, but it was one of the Counties that had put it on their radar screen.

Ms. Yukimura: It was introduced by President TsuTsui on request, I think I heard that it emerged mainly from Maui where some of the

developers were trying to get around the Maui fifty percent housing requirement but it is a very ill-conceived policy. It will affect our housing program because it takes it away from addressing all ethnic backgrounds and all income levels that qualify for affordable housing. It allows it to be put on DHHL land. Now if it had been with the consent of the County, we have already a memorandum of understanding where we work with DHHL and give some credits to them, but to have them be done over the Counties' consent – without the Counties' consent, and to places where a fifty percent blood quantum is required and put all our affordable housing resources there, does not seem right and without any restrictions which if we say we need it in Po'ipū and Princeville or Līhu'e and Kapa'a where there are jobs and where people can walk or bike to work, now that is all out the window. It is an anti-smart growth, it is potentially racially discrimination – it has so many problems.

Chair Furfaro: Well I just raised it. It is not on the report but I knew it came from one (1) of the Counties' and I am concerned with it.

Ms. Yukimura: Chair, perhaps we can put it on my Housing Committee agenda and have more detail analysis and discussion.

Chair Furfaro: Absolutely, let us do that.

Mr. Pacopac: We will send over more information along with some other stuff.

Chair Furfaro: Send it to me pleas, and then we will go from there. But I did send testimony saying that was - it needed to be managed at the Housing Agency here.

Mr. Bynum: (inaudible) done with that issue but this goes to home rule issue right and there were a number of Bills at the Legislature this year that were home rule related, particularly I am thinking about proposals to exempt environmental – 343 the exempt the environmental regulations. I believe there was also a Bill that override the County's building code which I believe died, are you aware – did you track these home rule issues for us? Because I am thinking in the future, I find out about these things and it is like, where did that come from, and I would hope that the good service that you are providing for us in the future we make it clear, that we want to track these home rule issues. Whether we agree with them or not, anytime the Legislature – when we have a Housing Agency, when we have a Building Division, traditionally building codes and these things are set at the County level and the Legislature in their wisdom says “we know better than the Counties.” Is that something you are tracking?

Mr. Pacopac: What we do is a lot of these Bills – we work with the Administration and all the Departments – Housing, Water, whatever we do... and they are tracking these Bills and they will alert us that these are important to their Departments. This home rule issue should come up in one of their Departments and then they forwarded it to us and we do track it. They prioritize the Bills too on whether it is a high priority or a low priority.

Mr. Bynum: It is my understanding that there are a number of Bills that would have exempted environmental studies?

Mr. Pacopac: There were quite a few.

Mr. Bynum:

But they mostly failed or all failed?

Mr. Pacopac: Yes. I think all of them failed unless... there was one (1) about construction that was in the limelight about letting the projects go without – like you said the reviews. I know the construction industry was pushing a lot for it but I do not think it made it.

Mr. Bynum:
exempting building code?

And were you aware of a Bill about

Mr. Matsuura: I think there was one (1) specifically on overall building codes for certain types of development. There are also some building code exemptions for buildings on agriculture lands, things like that.

Mr. Bynum:

And that Bill did not pass?

Mr. Pacopac: I think those was requiring fire sprinklers for buildings. They were trying to take away the fire sprinklers and there were some problems with the Ag land because the Ag land guys were complaining that they did not need it – they had problems with that. So they exempted all the Ag land people. The Bill did pass out but I am not sure what the specifics were but it had to do with the fire sprinklers.

Mr. Matsuura: There was another Bill on certain kinds of structures that was put on Ag land about an exemption or allowed, I think there was a provision that was inserted... the Bill did pass but required County approvals for water, electrical – so we can follow up on some of the buildings issues as well.

Mr. Bynum: I want to make clear my comments that I am not necessarily taking a position on one way or the other – well I will on the environmental issue. I have testified and said “no we should not be exempting our environmental laws for the sake of expediency” that can get us in trouble but in some of these other issues, this is an area that traditionally is handled by the County. Those advocates who are not happy with the building code, they can come to the Counties and make that argument and to many of us that is like a end run...

Mr. Pacopac:

Like you said, it is a home rule issue.

Mr. Bynum: Thank you for tracking those types of Bills and I think that should be clear us going forward in our scope of work.

Mr. Pacopac: If we see things, we do alert the Administration and the Departments because they do the research on it and they will come back and tell us whether it is good or not.

Chair Furfaro: I would appreciate if you forward testimony that you have on my question that led to this discussion on DHHL lands. If you can forward that to us, I would appreciate it.

Mr. Pacopac:

We will do that.

Chair Furfaro: I also want to let you know that we will have some discussion on budget time, obviously from the comments around the table

there are a lot of pleased Councilmembers with your performance but we want to review your contract at budget time.

Ms. Yukimura: You mentioned that when there appears to be a home rule issue involved in a Bill, you will notify the Administration.

Mr. Pacopac: It is usually on the subject matter.

Ms. Yukimura: Oh, by subject matter.

Mr. Pacopac: Yes, if it pertains to a certain subject, then we feel that the Administration Department has the most expertise in it.

Ms. Yukimura: Right. In the event that we continue to work with you folks which I hope we will, can you also route that notifications to us?

Mr. Pacopac: Sure. Right now everything is with the Administration so we do everything...

Chair Furfaro: Well we will have time to change that in this next contract.

Mr. Pacopac: Yes, correct. So if you change that that is not a problem for us too.

Chair Furfaro: Vice Chair did mention that you did alert our Housing group on this item?

Mr. Pacopac: Yes.

Chair Furfaro: And it will reappear in her Committee in the near future, so anything you can get to us, we would appreciate it. And although I told her that was the last question, Mr. Bynum has a question.

Mr. Bynum: On these environmental issues and home rule issues, can you let us know – follow up how our delegation voted on those issues?

Mr. Matsuura: Yes.

Chair Furfaro: Gentlemen, thank you very much for being here today and I would like to excuse you so that I can take public testimony on this item.

GLENN MICKENS: For the record, Glenn Mickens. I thank both these gentlemen for their diligence to be here for this testimony. I just have one (1) question about SB 2046 and HB 1749 HD2. Both say requires the State Director of Finance to transmit to each County and percentage of all fines and forfeitures collected for all uncontested infractions committed to that County, but 1749 adds with certain exceptions. My question is what does this exception mean and in particular why is it we cannot keep all the fines and forfeitures on our island? I know our Police Department is the one to go out and get these things, so I am not sure why does the State have to enter into these things? I do know if any of you

members can answer that question but maybe these two (2) gentlemen can answer it.

Chair Furfaro: Glenn, I will call them back up for you because I have another item as well.

Mr. Mickens: Thank you, Jay.

Chair Furfaro: Let me see if there are any other testimony before I call them back up. Ken, did you want to speak? No. Gentlemen, can I call you back up and hopefully you heard Mr. Mickens' question, but on another note although it was not something we discussed, I also want to recognize that Representative Kawakami introduced a Bill on safe routes to school and it was very successful and so forth. Can you give us a little feedback on that item as well.

Mr. Bynum: Are you familiar with the Bill though?

Mr. Pacopac: Just briefly and I do not know the number.

Mr. Bynum: I have been told that it passed in final reading but it is Representative Kawakami's Bill for safe routes to school.

Chair Furfaro: I have it right here Mr. Bynum. It is safe routes to school regarding some special funds and surcharges have been transmitted to the Governor for signature.

Mr. Bynum: We have talked about for years the Counties have said uncontested traffic fines, we should get a portion. The Legislature never agrees with us but this Bill says there is a surcharge on traffic that will come to the Counties to fund safe routes to schools and pedestrian safety and so it is really a neat landmark. I was amazed that it passed. I want to recognize former Councilmember and Representative Kawakami for introducing that and getting it through in the first year, it is pretty amazing. My understanding is that it puts a surcharge especially if you are in a school zone, a few extra dollars on your ticket that will go to the Counties into a special fund to address safe routes to schools and school zone safety which is pretty awesome – good job Derek.

Mr. Pacopac: Regards to his question...

Ms. Yukimura: First of all, it was Representative Kawakami who introduced it and he is to be greatly commended as well as our whole delegation who supported it but it also there is this group called Get Fit Kaua'i led by Bev Brody. It was an incredible a grassroots citizen effort and I think there were letters and emails that bombarded the Legislature which is one (1) indicative of what it might take to get a Bill passed and then it was in the structuring of the Bill that is also what we need to learn about – to get things passed, it did not take any existing moneys. It added a new form of money and then said let the Counties have it and it related to an Motherhood and apple pie issue of walking to school safely. That is what makes for successful Legislation and we need to think about the other pieces that we want to get passed and how we structure those and design those. It is a wonderful thing, we are all very happy about it and I think it gives us some guidance on how we might want to get more Bills through.

Chair Furfaro: Mahalo to Representative Kawakami. Now gentlemen, if you can refer to the questions that surfaced with Mr. Mickens, I would appreciate it.

Mr. Pacopac: Evidently it is a State law that they collect all the fines although the County does all the work. When we look through some of the Bills, there are some exemptions though on the fines of where the money can go. I do not know what the exemptions are; we can find that out.

Chair Furfaro: If you can find that out, I would like to share it with Mr. Mickens.

Mr. Pacopac: We can find out what the exemptions are but it is not listed right now, so we do not have it here. There are some exemptions on the money going somewhere. Like this one here, it would be an exemption too that they would have.

Chair Furfaro: But this is a charge...

Mr. Pacopac: This is a new law. I often wonder why the Counties and the Police did not get their own money because they are the one that is working hard to get the money.

Chair Furfaro: Well maybe we can put a fuel surcharge on what it takes you to stop somebody with a ticket but I want to make sure we understand, you will give us the exceptions?

Mr. Pacopac: Yes, we will give you the list of exemptions.

Chair Furfaro: And then the piece that did get through was a surcharge on the charge?

Mr. Pacopac: Correct.

Chair Furfaro: Can you direct that to me and then I can get it to Mr. Mickens. Thank you again gentlemen.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo: This is for Mr. Mickens. What I was told is that in the old days the Counties ran the Court Houses, so you got to take it; you went to the County Court House and you got your penalty. The State took that function over and with that function went the fines. Some of the members, mainly Mr. Souki, refuses to budge and that is his position, and as long as he is there, I do not anticipate that change. We did get it heard this year and he was open to hearing our – and we had suggested a surcharge as well, so it would not take away from the State, but he is old school and he is saying that is our function even though on the un-adjudicated fines – citations, it is all County resources, it is not State sources. It never makes it to the Court but we will keep trying. But that is the reason, when the State took over the Court Houses way back when, the fines went with it and that is where it is at today. Until that changes, well, you know – maybe we will get some success in the next few years. And we are only asking for a very small percentage of the un-adjudicated, so it is County, Police Office, County

Prosecutor and it ends because the person pays the fine, and he or she does not go to Court. We will continue to fight for that and ask for that small percentage and see where it goes.

Mr. Bynum: On this traffic fine thing, I always chuckle when I read in the newspaper "the police is out there because they want to get all this money for the County," and so just for the general public, none of those traffic fine money come back to the County. In terms of our lobbyist here, sometimes lobbyist is a bad word, I hope that anybody that watches this today sees that it is really important for our interest and our citizens' interest to have informed boots on the ground because the Legislature is not covered by the Sunshine Law which means things can move very quickly there, and sometimes, since I have been paying attention, we have this law that really impacts our citizens and impacts our County and it happens just like that before we even had an opportunity to respond. These gentlemen are there, they are knowledgeable, they have been around for years, and they can keep us alerted. So it is an important function and worth the expenditures.

The motion to receive C2012-147 for the record, was then put, and unanimously carried.

C 2012-148 Communication (02/21/2012) from Council Chair Furfaro, requesting the presence of Leonard A. Rapozo, Jr., Director of Parks & Recreation, and Gary Ueunten, State Department of Health, to provide the Council with a six (6) month update on the Lydgate Pond Restoration Project: Mr. Rapozo moved to receive C 2012-148 for the record, seconded by Ms. Yukimura.

Chair Furfaro: Before we go any further, this is a request we put on the calendar dealing with water quality at Lydgate and a six (6) month update and I want to thank Mr. Ueunten from the State Department of Health for being here with us today.

There being no objections, the rules were suspended.

LENNY RAPOZO, DIRECTOR OF PARKS & RECREATION: Thank you Mr. Chair. For the record, Director of Parks and Recreation Lenny Rapozo. I have submitted and you should have gotten a copy of our report regarding the Lydgate Pond Restoration Project. In the report is a draft letter report from the consultant that we hired, Oceanit Laboratories, to look further into the silt that was on the bottom of the pond and what remedies they had offered in order to (inaudible) what they are doing. I do not know the difference but this is a draft letter but the project is ongoing and they have emailed us to say that they will have a more comprehensive report at the end of May. For this presentation, this draft letter was prepared for you and given to me last week Friday.

Chair Furfaro: Thank you very much for the follow up and we do understand for the purpose of this meeting that there will be a final summary, that this is a draft report that you are reporting to us now?

Mr. L. Rapozo: Correct. On page two (2) of our report, again this is the letter from Oceanit, and all that our Department did was add some pages that we can follow along with that.

On page two (2), the objectives of the project or what the scope of work is to analyze water quality and circulation in the pond, determine the extent of the silt in

the pond, and provide recommendations for restoring the silt impacted area of the pond. The report goes into detail as to the methods that were used, the investigation that was used in the field, and you can read it later, but I wanted to emphasize the portions of the report that makes the summary of each section. So in methods, I would like for you to go to the last sentence in methods on page two (2), which the data collected was analyzed for silt thickness and water quality parameters. The silt samples were sent for laboratory analysis and the result of the analysis is still pending. Therefore, I want to point out that this is the draft report with the final report still pending. The findings, they talk about the investigations that are presented and discussed in the section.

On page three (3) which is a continuation of the bathymetry and bottom condition, on the last sentence it is noted that a more accurate description of the composition of the silt, the layer, will be available again with laboratory analysis results and will be documented in the draft report. This is called the draft letter report, they will document the draft part later. Under currents, the last paragraph, the results show that under normal condition, the pond currents are not dependent on tide conditions or wave conditions outside of the pond. The circulation currents due to waves may have decreased somewhat after the repair of the protected break water. This implies the circulation in the pond will be dominated by waves and tides only under high tide and strong swell conditions.

Under wave surge – a wave surge of approximately six (6) inches was measured and the wave height outside of the pond was estimated to be about two (2) or three (3) feet. This implies that the wave penetration factor is approximately point zero, two (0.2).

The report goes on to discuss water quality, the dissolve of oxygen concentration and turbidity and that was an issue of concern when we had last had our discussion at this body. I would like to point out in turbidity, the turbidity has decreased significantly during the last few months. This can be attributed to the slight shrinking of the silt patch, and the consolidation of silt that is occurring in the originally soft silt layer. It is anticipated that if left undisturbed this silt layer will consolidate further and mix with sand and cease to become a source of turbidity in the pond. If the silt layer is disturbed, it might expose silt layers below and may delay water quality improvement.

The conclusions and recommendations reads, measurements and observations show that the silt impacted area has decreased slightly. The lower layers of silt have consolidated and mixed with sand in many areas. There is still a thin layer of soft silt at the top of the patch that is expected to consolidate eventually. The other water quality parameters are in the range expected for a near shore area and are not affected by the silt patch. It is recommended that the silt patch not be disturbed so that the pond is allowed to restore itself gradually. That was the end of the report but since then we had a weather event that I wanted to show and discuss as to what the pond looks like today as late of yesterday.

Yesterday I went to the pond and jumped in the water and looked around and there is fish – palanis about this big, and this is not a fish story, palanis about this big, mullets – I am not going to show the size of the mullets because might get the night time fishermen that might be there in the darkness but there are also (inaudible). There is life or fish along the edges of the pond. The unfortunate thing what has happened during the last weather event, and I also want to bring to this Council's attention today, in this report is what I would like to show. It is

documented in pictures pages five (5) through twelve (12). In my report is followed by Gary Ueunten who is from the Department of Health and his data analysis and we have had discussions about what the numbers mean, and Gary, at the request of Council Chair, is here to answer those questions, but I just want to go over the pictures that I have shown for you.

On page five (5), we have two (2) pictures – the bottom picture of page five (5), this is what the pond after the reconstruction of the wall looked like prior to the beginning of March, before the March weather event. If we remember, the area of silt that we are talking about is this area right about here which extended until about this area here, and this is where prior to the weather event that eventually it was being covered up. I also talked to the lifeguards yesterday and they agree with the report and they said that prior to the weather event, the water was clear and the silt was getting smaller in their opinion.

This is what happened on the last weather event and this picture was taken March 6 of this year. This is a deep gorge that is a result of runoff rains. You all remember that we had a severe weather storm and the rains came and this gorge came in, what did happen though is that the pond (inaudible) and then we repaired it. We did some work here at the beach where all the debris that came into the pond was absent of any kind of dead animals that we used to see in the pond, it was absent of all large trunks of trees and wood that we normally used to see in the pond. That is very different. What we did see though was a lot of little stuff, a lot of branches and tree limbs that was able to get over the pond, and on page seven (7) is a picture of what – right above the shoreline in the big pond looked like after the weather event. When we went to pick up the rubbish of this area, this is what it looked like. This is the small stuff that now comes on shore with some of this stuff, all in this section here of the pond up to here. With the help of partnering up with Public Works, we got rid of six (6) roll offs from this area and with our crews, with the help of Friends of Lydgate Park, we were able to – they took out whatever small stuff they could and we went in with our machines and we got rid of six (6) roll offs which is pretty significant.

We also procured the use of... our Public Works excavator was dispatched in Hanalei trying to fix roads, and we did not want to wait for it to be available, so we hired and went out for three (3) bids, we hired an excavator to reach and gather all the trees and the wood that was in the pond and that was removed, that was part of the six (6) loads.

This is what is there or was there after the storm. This is something and I talked to a lot of people that they have never seen something like this before and this is in the middle, this is the kiddy pond and this is where the wall between the kiddy pond and the big pond came out, it looked like a small island of stuff and it looks like mulch with little branches of twigs and leaves. This is a different picture looking towards the big side of the pond. All of this has disappeared as of today but all of it has gone into the pond and been coming up on shore. Again, Friends of Lydgate on doing their weekly cleanup has been raking and getting it off the shore but this is something a lot – what is left today is in this corner here and I am going to show you a picture, but in terms of relationship to the pond, this picture is the area left of this whole wall or pile or blanket and this is a close up of what this stuff looks like. What is strange is that it has been over almost two (2) months now and this is what is left in that corner; it is about four (4) feet thick, but you would have thought – so there must be some kind of oil base or something on this thing that it

keeps it together because you would think with all the wind and everything, this thing would have blown away like leaves in your yard.

This is the pond that it is today. I wanted to show that there is still wave action, all here appears to be clear, but you can see a dark under the ocean thing and that is all that black stuff that has settled into the pond. It is washed up, as you can see that it is all nice and cleaned here, some of it washes up way up here and then our Friends of Lydgate, they go and they put it in a pile here and then we eventually pick it up. This is what it looks like in this corner here, this area here along this wall here, this is what it looks like under the water.

This is the kiddy pond and the kiddy pond seems to be affected the most in terms of the amount of it but it, also appears and maybe Gary can speak to this because he goes there every week, but it also appears that it also cleans out itself quicker, the kiddy pond, for whatever reason. A lot of stuff comes in but a lot of stuff gets washed up on the beach.

I went into the water and I wanted to look and I walked from here all along this wall here, all the way out to the corner of where this picture was taken, and I do believe that the report speaks truth in that sand does come back, because right about here, I looked on the floor of the pond and it was white. I wondered what it could be and I went down and picked it up, it was sand. The sand is covered with all that rubbish, all that stuff that is on the bottom. So there is truth to what they said that the sand is eventually coming back. I walked along the edges of the pond, all the way here, all the way back to where the four (4) foot big pile of rubbish is still there – the leaves, and this is all clean around the edges here. Like I said, there is a black in here, but here is all clean, it is all clear, and this is where I saw the fish yesterday.

This is a tough one, we are unable to get a machine in there to get rid of all of this stuff. Right now the best we are doing is thanking the Friends at Lydgate for raking it up and putting it in piles, and we will go back and get it and clean it up, and hopefully that will be the answer. We had different discussions with different kinds of stuff, including maybe going out there with scoop net is the only thing I can think of and go scoop all the stuff out.

Chair Furfaro: Lenny, what is the date of this slide?

Mr. L. Rapozo: This one here?

Chair Furfaro: Yes.

Mr. L. Rapozo: Yesterday.

Mr. Chang: That is the baby pond?

Mr. L. Rapozo: This is the baby pond. The baby pond seems to be the most affected, but yet it appears that the baby pond seems to be the fastest to get it to the shore so that we can ask for help to pick it up.

Mr. Chang: Regarding the baby pond, after the storm the baby pond was full with debris? It was covered?

Mr. L. Rapozo: Yes.

Mr. Chang:
pond on the debris?

So our excavator was actually in the baby

Mr. L. Rapozo: No. Our excavator at this point – we cannot touch the water. The excavator can go as far as he can close to the water's edge, but his tracks cannot go into the water. He reaches out as far as he could and he – funny because when we were kids, we would play with the water like this and then the stuff comes in, so that is what he did and he played and got all the wood in and in two (2) days, he cleaned up all the wood. What is left now is this fine material. Then he went over to the baby pond and he worked the baby pond the same way along the edges without touching the water with the tracks; we are not allowed to do that and grab the debris like that.

Mr. Chang: I actually got the wrong. The baby pond was full with debris like plenty that the lifeguards (inaudible) could drive in and around that the pond, right? They were actually riding?

Mr. L. Rapozo: I do not know that, I do not know if they did that but this is – possibly because this is what it looked like right after the storm, this is March 6.

Mr. Chang: Then it got worse.

Mr. L. Rapozo: Yes.

Chair Furfaro: Are you towards the end of your presentation?

Mr. L. Rapozo: We have Gary's update.

Chair Furfaro: What I would like to do is I would like Gary to give us an overview. I would like the Council to hold their questions as I know we have three (3) people that would like to pose some questions to us and then we will call you and Gary back. Mr. Ueunten, I am going to give you the floor and again I want to thank you very much for making yourself available from the State for us this morning.

GARY UEUNTEN: Good morning, my name is Gary Ueunten, I am the Environmental Health Specialist with the monitoring section of the Clean Water Branch in the Department of Health. I think it is best if I give you an overview of what I do and that will answer many questions. One of my responsibilities is to monitor recreational waters. We monitor for fecal contamination using two (2) fecal indicators which are bacteria Enterococcus and Clostridium and you will see those and you will see those in the table. Those are measures of warm blooded fecal contamination in the water. Along with the samples, we collect data on salinity, turbidity, oxygen, ph temperature, and those parameters are used to interpret the bacteria data.

Lydgate happens to be one (1) of five (5) core sites (inaudible) where we sample twice a week. If you look at the data you will see for most of the time, we sample there twice a week. The other core sites include Hanapēpē Salt Pond, Po'ipū Beach, Kalapakī and Hanalei Bay Pavilion. In addition to those sites, we have

what we call rotational sites or tier two (2) sites that we sample weekly on a rotational basis.

Chair Furfaro: Gary, before you go any further on these five (5) categories, could you give us slowly the numbers that are the acceptable levels that we can write over the top?

Mr. Ueunten: Starting at the left - salinity. Typically salt water is around thirty-five parts per thousand, the "ppt" is parts per thousand and that is typical salt water. Enterococcus - there is an explanation at the bottom of the table and it gives you a statistical threshold and single sample maximum. The next column is the Geometric Mean - that is the statistical function and that is a "EPA" method and what it does it takes out the variations in the counts. It is ongoing to the mathematical calculation but it goes back five (5) data points and it calculates an average. If you read at the bottom, the acceptable geometric mean is less than thirty-five "cfu" per hundred ml. "Cfu" is colony forming units, and a hundred ml refers to the volume of water tested. Clostridia perfringens is another fecal indicator bacteria, it has much lower counts because it measures spores, it does not measure the total count of bacteria, and it is not an "EPA" approved method. It is something we use in Hawai'i and is developed by Doctor Fujioka of University of Hawai'i and we use this as a reference. The acceptable value for that is less than fifty colony forming units per one hundred ml.

Chair Furfaro: Less than fifteen.

Mr. Ueunten: Fifty - "5" "0".

Chair Furfaro: "5" "0" okay.

Mr. Ueunten: The next column is turbidity. "NTU" stands for (inaudible) turbidity units and turbidity is a measure of clarity in the water. As the report mentioned, it is measured by the (inaudible) beam of light through the water sample and seeing how much light is absorbed or dispersed. The last column are my comments. When I go and sample, I write down comments just to give us a better idea of what the condition was.

Chair Furfaro: Thank you for that summary. Let me just ask you, when we look on your commentary, and I am going to go specifically to February 29, it seems like the numbers change as much as one (1) or two (2) days after rain or runoff. Is that typical?

Mr. Ueunten: Yes, it is typical, especially in an area like Lydgate where circulation is limited by the structure of the pond. The effects of runoff will linger longer in an area that is open to coastal currents and more circulation.

LUCIA EICHELBERGER: My name is Lucia Eichelberger and I testified here about a year ago and I have been bothering you ever since with letters.

Chair Furfaro: You are not bothering us. What came out of your testimony is we said we would come back in six (6) months and see this course. Go right ahead.

Ms. Eichelberger: I went off island and I left at the end of January and I sent an email before I left. My experience by swimming there every day was that the water was not getting any clearer – it was still smelly, there were still silt on the bottom. As far as turbidity, I can tell you that I take a shower after swimming at Lydgate and then I come home and I take my swimming suit off and squeeze it and the water comes out brown. That is my test of turbidity. That was in January before the big storm. What happened – I went in the water about a week ago, five (5) days ago after coming back, and it is terrible. The bathroom is completely full of debris and when it comes up to two (2) or three (3) feet in some areas, the water is black and I went... I cannot believe that place is open to the public. I went into the water and swam for two (2) minutes and I rushed back out because I was afraid to stay in that place. I cannot believe it is open to the public, I cannot believe that our kids swim in there. That place should be closed until it gets cleaned. Like Gary said, it was normal with limited circulation, takes longer time to clean, but that is the point. There should be more circulation, so you need to make an opening in that wall so there is a circulation of water that is the reason why two (2) months after the storm, the pond has not cleaned the silt out. There is a sea wall in Waikīkī in front of the Royal Hawaiian Hotel and it is like a dam, but it is open in one (1) side and people swim there happily and it is clean. So if they can do it over there, maybe we can do it over here too. The point is that there is no circulation and that is why it does not get clean.

Chair Furfaro: The seawall that you are speaking about is in front of the Waikīkī Marriott, the old Hawaiian Regent.

Mr. Eichelberger: My suggestion is that you guys go actually into the water and go see what the water looks like. Somehow the pond needs to be dredged and there has to be more opening into the wall.

Chair Furfaro: We are going to call those gentlemen back after we take testimony.

Mr. Mickens: For the record, Glenn Mickens. Having gone to Lydgate Park yesterday, it was heartbreaking to see Morgan Pond in such deplorable condition. Over the years, this pond has been the favorite place for locals and tourists to swim, exercise, and snorkel. It is inexcusable that a decision was made to ruin it. I do not think that the decision was flagrantly made to do this but it has been done.

Wouldn't the prudent thing have been to excavate a sample from the pond prior to dredging it and find out if the bottom had a deep sand base? And I guess maybe this is controversial, I do not know, but I do not see any sand down there. Obviously the results have shown a mud base and thus the clear waters of the pond have been ruined. Sources I have talked to say that the rocks that circle the pond have been so tightly fitted that the outside ocean cannot replenish the sand in a normal way. I think that goes along with what this young lady just said.

My source did not agree that the pond has been clearing up even before the big storm. Also, a huge boulder was removed while dredging and now there is a nine (9) foot hole that the public must be warned about for swimming safety. These observations are not hindsight being greater than foresight. We have some good engineers who should have had the expertise to make sure the outcome was what good planning would have told them. Ready, fire, aim – you be the judge.

Not only is the main pond a muddy mess, but the keiki pond is even worse, and I certainly would not want my grandchildren playing in it, and if you have looked at it I am sure you would agree with me. Even though the water quality may not be contaminated, it certainly is not attractive to the people the way it once was. I spoke to a tourist from California who was sitting in the sand and she could not believe what has happened to the pond as the last time she and her family were here – two (2) or three (3) years ago, this was their favorite place to swim and she would not go in the water now.

Hopefully tons of sand can be trucked in to correct this major error as it appears that the ocean will not be able to cover up the mud base. Also, we need measures in place to clean the pond promptly after storms have inundated the area with logs and debris and not have it closed for two (2) or three (3) weeks depending on volunteers to clean it up. We need heavy equipment, trucks, and workers to do the job, not volunteers who can and will only do so much.

The sandy beach area of the pond is a mess and needs serious attention. Just as Waikiki Beach is cleaned by machine each day, we need a machine to do the same for our beaches. Our beaches are the crown jewels of our island and the major element that keeps tourists coming to Kaua'i and keeps all our people proud of what we have. Let us keep it clean and sparkling. The sandy beaches south of Lydgate Park have so many logs and debris on them from storms that the sand is hardly able to be seen or walked on.

Where is the Administrative leadership to see that these problems are solved and stop being repeated? I could go on and on about the many problems in Lydgate Park and its "World Class" status, but since the agenda is for the pond only, I will say thank you for hearing my concerns. I do not know if any of you have questions maybe Lenny wants to respond to some of these or not, but if you look at that place, the small area that they have down there, Lenny showed some pictures where the sand was relatively clean right at the edge of the thing, but when you go up, you still see all this debris in the little beach area. It should not be that big to clean if we had the proper equipment to go out there and do them, we should not have somebody volunteer with a rake to go out there and clean this stuff up or wait again two (2) or three (3) weeks to have somebody with trucks come in there, excavator. I saw the excavator once, he said they cannot go into the water and I saw the excavator go into the water, out so far and then they did not have screens and so I think the EPA shut it down, they could not do it. They did have a machine, it went into the water and they started to dredge it and then it stopped, this has been quite a number of years ago.

Chair Furfaro: Glenn, I think what we are going to do is I said earlier because this is a returned item, we all agreed that we would have them back in six (6) months and maybe we will pose some of these questions to them as first of all about the health qualities issues, if they exist. And secondly, about design and consultation with Oceanit who is our consultant on this and we will pose those questions.

Mr. Mickens:

Okay, good. Thank you.

KEN TAYLOR: Chair, members of the Council, my name is Ken Taylor. Thank you for this opportunity to revisit the activities of the pond. It looks like we are going to have this kind of problem continually unless something is done to alleviate what Mother Nature brings down the rivers. Seems to me, we can

either sit here and continue to talk about how to clean up everything after every storm or we can go up the rivers and do the cleaning.

Chair Furfaro:

Do you know that it is a State Park?

Mr. Taylor:
together and we need to address...

I understand that, but we are all in this

Chair Furfaro:
Park, please go on with your testimony.

You answered my question, it is a State

Mr. Taylor: The problem has to address and it has to be addressed collectively by this body – the County and the State. You do not sit there and wait for the debris to come down every year and after the storms and clean up when you can go up and... what is causing the problem up stream? Why is there so much debris along the streams up stream? Why are we not addressing these issues that are creating the problem down below? I come from an area where we had streams where they came down off the mountains at a much steeper rate than we have in these areas and we worked with the National Forest Service, the County and the Cities collectively working to keeping the streambeds clean as much as possible. I understand that under certain circumstances, it goes beyond that but they were able to collectively to alleviate a lot of problem by doing the prevention work prior to the problems. I just think it needs to be looked into and addressed otherwise we are going to continue to have these problems, but it is unfortunate what has taken place in the pond itself this past couple years, but it is now happened and how do we resolve the problem? I think we need to get better circulation through the wall, I think we need to go in and put some sand back in the pond, and until those things are done, I do not see any real answers to any of these problems.

JOE ROSA: For the record, Joe Rosa. From what I have been hearing so far, Kaua'i has seven (7) major rivers, starting all the way from Hanalei through Waimea. The County Recreation should have a contingency fund set aside for all those debris that come down from the mountains to clean this so called attractive beaches, not wait until something happened and then go scrape up money here and there. This is something that it is a tourist designated areas that the tourist come to Kaua'i to see and they have to wait in all that debris. When Coco Palms was in operation, I was working with DOT then, when debris used to come up on their beach area there, the staff from Coco Palms used to go over and clean it and used to burn some right on the beach there. Thanks to Coco Palms and Ms. Buscher at that time, Wailua Beach was kept clean, but today it is not, she is gone and Coco Palms is no more, so it falls into the County's jurisdiction or the State. But there should be funding set aside for tourist designated areas like that there. Not wait for money to come in and you have to scrape the ground somewhere else. You know it is a tourist attraction, the public and the people use it – do not wait, have that contingency fund set aside. Instead of spending three hundred something thousand to reseat the Convention Hall, use that money and in the contingency fund. I do not see why they had to replace a thousand seats in the Convention Hall anyway. A thousand seats were not destroyed, and it is hardly used, so anyway that money – the three hundred thousand could be used in that contingency fund and get it started. That is all I have to say.

Chair Furfaro: Thank you. Anyone else wish to testify on this item? Gary and Lenny, can you come back up? Gary, first to you, I want to let

you know how much we appreciate you visiting at least twice a week and doing water testing for us. Is there anything in your opinion that we need to approach more urgently because the conclusion of the engineering firm Oceanit says that it is recommended that the silt patch not be disturbed so that the pond is allowed to restore itself gradually over time. Is there some concern here for us if we follow the consultant's recommendation?

Mr. Ueunten: I think that it is prudent to follow their recommendation, especially to wait until they get their analysis back from the sampling of the sediment. That should share a lot of light on what should and should not be done.

Chair Furfaro: When do we expect that final analysis?

Mr. L. Rapozo: The email said by the end of May – the draft report, this is a letter report that they gave us.

Chair Furfaro: It seems to me – I have not heard other than from Ken Taylor that we have not addressed the design element. Are the rocks packed too close together, did we change current directions, anything, with this new design, did Oceanit actually participate in the design of the wall as it came to?

Mr. L. Rapozo: Yes, they did.

Chair Furfaro: How much it got compacted and so forth?

Mr. L. Rapozo: They helped with the design of the project; as far as the compaction of the rock, I do not have that answer for you. The original intent was to restore the wall to what it originally was.

Chair Furfaro: Originally was?

Mr. L. Rapozo: Yes.

Chair Furfaro: The query comes up, are the stones so compacted that the current through the break waters as pointed it out to us in Waikiki, those rocks are pretty loose and the currents from the outside surf actually goes a little bit through the gaps in the stones. We did not hear from them on the nature of how much the stone is compacted?

Mr. L. Rapozo: No. From a layman, it is definitely not like what we had been used to prior to the redesigning of the wall. But they must be loose enough to have the fish come in and out, because prior to right after the project was done, there were no fish life and now there is, so they must be squeezing in somehow.

Chair Furfaro: How about the issue of mud in there, did they make any recommendation about replenishing sand in the pond?

Mr. L. Rapozo: Not yet. They still are studying the sediment and the results have not come back yet.

Chair Furfaro: Did they make any recommendations of opening up any small channels to expedite the cleaning of the pond so then we can go back and rebuild those holes after we expedited the salt water coming through.

Mr. L. Rapozo: We are waiting for that final report when they complete their analysis to get a better understanding.

Chair Furfaro: Could you send for us those four (4) questions to them so we can actually see a written response about how much the rocks are compacted, should we open up some temporary channels, should we add some sand to the bed? I clearly read what they are saying, "do not touch the silt" but could we send those over and obviously it will be important for us to get that final report to have you back.

Mr. L. Rapozo: Yes, I would be more than happy.

Chair Furfaro: I think that is where we are at, but we clearly need answers to those four (4) pieces.

Mr. Chang: Thank you, Gary and Lenny, for being here. Gary, thank you for following up on the Council's request for going to the baby pond on the outskirts in the surface, you covered it pretty much with your sampling. I wanted to find out with the Oceanit report, did they initially go out into the community to talk to the people – what was their deal? Rebuild the wall – did they do any background checking on the wall or Lydgate, how was that facilitated?

Mr. L. Rapozo: There were no real plans to how the wall was built, so my understanding – I am not real sure who did the research but the research was done to find out how the original wall was built and with that they used their expertise to – we need the screen in order to go into the pond. That was allowed to reconstruct the pond. Now that the reconstruction has been done, the machines cannot go back into the pond to do that unless we go through the whole process, the environmental process, for the purpose of work. We do understand that this was a repair or maintenance type of issue. I do not believe we are able to change the structure of the pond as we know of it. We were not allowed to bring in any outside rocks, we only had to take the rocks from inside the pond and restack, and we could not even take rocks from outside the pond to be restacked. Those are those types of environmental issues that we dealt with in this project.

Mr. Chang: Can we dismantle portions of the pond?

Chair Furfaro: We were going to ask that.

Mr. L. Rapozo: Those are some of the questions the Chair had asked.

Chair Furfaro: Using the same rocks if we can at least expedite the channel.

Mr. Chang: What I would like to comment on is on the introduction that we did not go through the introduction, it was dredged to a depth of six (6) feet and damaged, actually it was much more than six (6), it was closer to eight (8) to nine (9) feet, you needed to dive to get to the bottom is what I would like to say.

Mr. L. Rapozo:
to nine (9).

The initial scope of work was to be seven (7)

Mr. Chang:

Okay.

Mr. L. Rapozo: Yes, they did go deeper than that, but I believe what that was addressed to is that at the three (3) foot level, that is when they began to bring silt up.

Mr. Chang: Because I want to respectfully disagree to the second to the question, and when it says the pond appears to be slightly over dredged and has a layer of fine sediment released by the dredging activity, I think it was not slightly, I think it was horrifically over dredged. I think after last year in May, the Memorial Day week when you and I went thereafter, it says sediment released, a fine layer of sediment was released. As you and I both know, we compared that in our last discussion to a loi, you literally sank into a taro field. Just referring to page number three as far as the current is concerned because I think it is very important. In the second, third and the fourth sentences, it says that the surface current are about one (1) to two (2) percent of the wind speed. The currents speeds both at the surface and below the water surface is that six (6) inches, one (1) foot or what have you, there is about two (2) inches per second, but I can assure you and that is a question for them, because the bottom does not move. The bottom does not move at all. When you dive down and if you can see the bottom, you can see that the leaves and everything is just stagnant, there is just no movement. In reference to the water surface below, in the last sentence it says that the circulation currents due to the waves may have decreased somewhat after the repair of the protective breakwater. The circulation in the pond will be dominated by waves and tides only under high tide and strong swell conditions. That is the conversation we had back in November, because when the tide is up and the surf hits over the wall, it goes over the wall and just splatters over the top of the surface. The wall is so thick, conservatively ten (10) to twelve (12) feet wide, if not, in realistic life fifteen (15) foot wide, so when the surf pounds over the top of the wall, it can barely make its way through the cracks because the wall is so pounded down. You can see the waves busting over, but once the wave go in, you would think you would get boils from underneath to make its way to the bottom for circulation of the bottom, but that bottom, it does not churn up the water itself. I just wanted to say unless there is some kind of a pipe going through different parts of the pond to get circulation, that place is never going to be able to move itself. I compared it to a toilet that you need a plunger to clear that bottom out with a good flushing and it will clear out. That area to the right where you saw the fish – because the eastern wall side is the only side that they really never did any dredging, that is why you still have sand there and you still have fish in that area here. If we had a channel that can move the bottom around, get it out to the east, I think when we get the big summer east swells or the south swells, because that area at the very end is like an afterthought of the pond, so those rocks are a lot more loose, there is circulation that can come in and out. If you go on the wall, you will see different color rocks and I think the different color rocks was a part of the old membrane that were allegedly, if you will, taken from the bottom base that was the original base because you can see different color rocks. Considering that we are always going to get storms and rain, unless we can get the bottom to flow and circulate...

Chair Furfaro: Mr. Chang, I am already three (3) minutes over the caption break. I think those four (4) questions have been posed in the

earlier summary, but I think Mr. Chang adds some details when you visited. Let us take our break.

There being no objections, the Council recessed at 11:33 a.m.

The Council reconvened at 11:43 a.m., and proceeded as follows:

Mr. Chang: Mr. Chair, I will wait for other Councilmembers to make their comments and then I will wait until we bring the meeting back to order.

Mr. Rapozo: First, Gary, thanks for being here. On your summary report, these tests – is it all from the same location when you make your samples at the pond?

Mr. Ueunten: Yes, the same location.

Mr. Rapozo: In the last meeting, I think you remember we specifically asked to have multiple sites in the pond, and I do not know if that was conveyed to you? We wanted to see different areas within the pond.

Mr. Ueunten: We sampled several beaches. My typical run when I do the course sites, starts in Hanapēpē and ends in Hanalei. For us to do more sites would be a special study and I would need to have someone design it and also fund it.

Mr. Rapozo: I see, okay.

Chair Furfaro: What would that cost?

Mr. Ueunten: Off hand, I do not know, depends on what kind of analysis. If we stick with the same analysis, I would have to go to the lab first of all to see if they have the capacity.

Chair Furfaro: I will send it over to you as a question so we can get an idea of the cost.

Mr. Rapozo: I think that is important for me because I believe in what Mr. Chang was saying that there is a circulation issue in that pond, it talks about it in the study. It might be important to get samplings from different spots from within the pond and I understand it may require a special study, but I will make the request to the Chair and we can... that would be done through your office? Would the request go through your office?

Mr. Ueunten: Correct. If I might add, the sampling sites are critical, so you would have to establish your sampling sites in coordination with the circulation patterns identified by the consultant. You would also need to determine before you do the study, what kind of result you are looking for?

Mr. Rapozo: The result I am looking for is to see what the levels are throughout the pond because if it has been taken from one (1) spot and there is no active circulation, which I am not convinced that there is, then we are getting the samples from one (1) spot but there may be some contamination on the

outer parts. We will try to see and explore and I am not sure if Oceanit – the consultant would have to design, does the State provide that kind of services?

Mr. Ueunten:

I am not sure. I would have to ask.

Mr. Rapozo:

We will ask and we will send it over. The other question for you, Gary, is you mentioned that we should follow the recommendations that we should not disturb the silt patch, at least until we get the findings from the lab. Would that mean closing the pond? I would assume if people are in the pond, the silt patch is being disturbed.

Mr. Ueunten:

State rules would require that I go up the chain to close the pond. It is not like a sewage spill where we have a protocol in place and if there is a sewage spill things can happen quickly. This would have to be considered by those above me.

Mr. Rapozo:

And I am not asking you to make that decision, but you said earlier that you recommended we follow the recommendations of the consultant which says, it is recommended that the silt patch not be disturbed so that the pond is allowed to restore itself gradually. I am not sure what they mean and it is hard without them here because that is a broad statement. Until it restores itself, does that mean the whole pond because it could be ten (10) years, so I am not sure what they are talking about. I do not know what they mean by disturbing the silt patch if they are talking about us going in and manipulating the patch or just casual swimming will make a difference and I do not know that is why I ask. It is difficult without Oceanit here. The study itself, Lenny, and I do not know how much of this you can actually answer because this is from Oceanit, but some of the things and Dickie covered some of it, the description of the composition of the silt layer, we should be getting that by the end of May, but all of their reporting where the current, the wave surge, the water quality, turbidity and all of that, they basically told us what they did and what they found but there is no comparison to anything. I am reading this as unless there is high tide or strong swell conditions then the circulation is going to be (inaudible) which I think causes a problem. They also talk about the results of the wind studies with those drogues, but again compared to what, I cannot make it out with this report. They talk about water trapped at the bottom, this is in the water quality portion, water trapped at the bottom due to density effects gets depleted of "DO," which is dissolved oxygen by biological activity, and again, there is no real clarification of what that means. Is that good or bad, is that normal or is that not? They talk about the value of dissolved oxygen concentration and the varying numbers from 4.16 to 9.03, and they say this single value is unusual in near shore area where large gradients are not expected. This may be attributes to an error in the probe measurement. Well what if it's not? What if in fact those numbers are accurate? That tells me absolutely nothing when it says it may be attributed to an error but it may not be, that is what it tells me. They did not do a retest to validate or invalidate the number. Of course it says there are no threat to fish life. Again, Lenny, I do not think you can answer those things that is all scientific stuff that I believe Oceanit would be the ones to answer. Mr. Chair, I guess what I would ask is that when we do get their...

Chair Furfaro:

They are coming back.

Mr. Rapozo:

Will Oceanit be here?

Chair Furfaro:

Oceanit, yes. They are our consultant.

Mr. Rapozo: Yes, I understand.

Chair Furfaro: They will be here and answer to those four (4) major questions that we already posed.

Mr. Rapozo: Okay. Then that is all I have, thank you.

Chair Furfaro: Lenny, you understand what I am looking for is a confirmation from Oceanit to be available at the end of May. If it turns out to be early June, it is early June, but whatever fits when they are going to release the report from the consultant.

Ms. Yukimura: Thank you for the photo, they are very helpful. Both of you, thank you for your input here. Based on this interim report and there is another report coming by the end of May?

Mr. L. Rapozo: I have asked Oceanit for something for this particular meeting.

Ms. Yukimura: Right.

Mr. L. Rapozo: And this is what was given to me, it is called a draft letter and in it is – there is a draft report coming.

Chair Furfaro: At the same time, I will make note of my disappointment with Oceanit. They had six (6) months to get us to this point and they could only produce a draft.

Ms. Yukimura: Well actually it is a draft letter report, what is coming next is a draft report and then there is going to be a final.

Chair Furfaro: However you want to soften it, Vice Chair, what I am saying is that they are a paid consultant and I expected more. They had since last December to realize this.

Ms. Yukimura: I am just trying to understand what is forthcoming or what we are expecting to come forward in the...

Mr. L. Rapozo: I do not know what kind of information but there is definitely going to be another report – a draft report.

Ms. Yukimura: So that is going to be a draft report that implies there is going to be a final.

Mr. L. Rapozo: Yes.

Ms. Yukimura: I just wanted to know what the sequence is and what the end result is. Understandably the draft letter report, although the Chair – I agree with the Chair that we might better expect something more right now but if it is a draft report or a draft letter, it is going to have a inconclusive data or information because they are finished right?

Mr. L. Rapozo: In the draft report?

Ms. Yukimura: In this report.

Mr. L. Rapozo: In this report, yes.

Ms. Yukimura: Understandably inconclusive. This is kind of a first big storm since the wall went up, the storm that happened in March, so what we now know is that the wall works to keep out big trees and big animals.

Mr. L. Rapozo: Yes.

Ms. Yukimura: But it is not keeping out the finer debris?

Mr. L. Rapozo: Correct.

Ms. Yukimura: What we are seeing in the finer debris is some unusual result of this blanket of what looks like compost?

Mr. L. Rapozo: Yes.

Ms. Yukimura: I am wondering if it might be dew, and I know to expect a conclusive answer is not reasonable right now, but I am just wondering if this kind of blanket is caused by the change in circulation caused by the wall. Apparently, what is let in now is only the small stuff. If the currents have changed because of the wall then you might expect different formations of debris. They present the problem that we now have to deal with.

Mr. L. Rapozo: In my brief understanding of currents in my position that will be something that we would have to look through the whole littoral cell which would be not just Lydgate itself, but from point "A" right beyond that point by the old Sea Shell to further down by the hotel would be the littoral cell for this area, which would determine what currents have changed, if they had changed.

Ms. Yukimura: I was thinking about the currents within the pond that would be affecting basically the formation of debris in the pond area.

Mr. L. Rapozo: Yes.

Ms. Yukimura: And that is basically our problem because we want the pond clear for use by visitors. Yesterday when I saw Mr. John Lydgate, he was talking about some kind of a machine that cleans the water or shifts through the water, are we familiar with that? I guess that is also a question we can ask our consultants, that is what type of water or near shore water cleaning machines might be available and this presumes that they would not harm the wildlife or fish life. I do not know if such exists, but that would be one (1) question I would have. The other question I have is, was there any discussion of a membrane that might cover the bottom, be fastened to the bottom to cover if there is a major siltation, a body of silt, to cover it so that it does not just keep coming up every time there is...

Mr. L. Rapozo: I have heard that question posed time and time again; when I went back and looked through the project, nothing was mentioned, but there is, I believe, a fresh water spring underneath the pond itself.

Ms. Yukimura: Interesting.

Ms. L. Rapozo: If you recall while swimming there, the water would get cold in certain places and not in other areas; the cold area is attributed to the fresh water spring.

Ms. Yukimura: So that would contribute to the flow of debris upward depending on the dynamics on the pressure down and so forth. The prohibition of our machines going into the water is part of the permit that we have right now?

Mr. L. Rapozo: It is a law.

Ms. Yukimura: Oh, it is law?

Mr. L. Rapozo: Remember growing up where we used to see those big machines opening up Wailua River?

Ms. Yukimura: Right.

Mr. L. Rapozo: We can no longer do that. With certain conditions they do not need a permit to go in there and open up the water way to help clear it but definitely this pond – we have restrictions in terms of what can touch the water.

Ms. Yukimura: I wonder if we can get a maintenance permit and I do not know exactly what the format of the maintenance would be.

Mr. L. Rapozo: This restoration of the pond started through the previous Mayor and Administration, and I am the lucky guy to have to construct it and dealing with it right now. It is a lengthy process. Anytime we are dealing with touching the water, it is a lengthy process.

Ms. Yukimura: Yes, I am sure it is, but it might be worth going through the process if we can formulate a proper way to clean it after storms and now perhaps because of the wall, we do not have to deal with the large trees but now we have to deal with the smaller one and maybe there is a way to deal with it such that it gets to be a routine that is permitted. Then of course, we would have to evaluate cost, and if we poked holes in the wall, we will also have to also understand that we might be re-inviting large trees, I do not know, we will just have to look at all of that. It is such a resource for people, we all know that it is a beloved place for local residents and it is a place where tourist come to. It might be worthwhile getting a permit if we can figure out how we can handle the debris properly and find out that the cost to us is something we can manage, then getting a permit so that we can have this process to do whatever things come in.

Mr. L. Rapozo: Yes.

Ms. Yukimura: I am just raising possibilities here.

Ms. Nakamura: Thank you, Lenny and Gary, for being here to present this. I wanted to just acknowledge everyone who did the exterior cleanup, the Parks and Recreation staff, Public Works, and all the volunteers – The Friends of Lydgate, because when you look at the Park pre and post storm, so much

was accomplished. Thank you for overseeing that. I guess I would just like to echo the concerns raised, follow up on the four (4) issues raised by the Chair, and also what I am looking for in this final report would be what are some of the short and long term fixes? What the costs are associated with those fixes and what is the timeline for getting that done? In looking at the data, it would be helpful to see data pre-construction of the wall and dredging so that we can understand. I think we have seen data along the way, so maybe not every day but sort of in general pre-improvement, post improvement, and where we are today would be helpful to see it just to make that comparison.

Chair Furfaro: Let me summarize this real quick first and foremost. The urgency we need from Oceanit is very important because it is almost summer and we all value what Lydgate means to our families during the summer period. If we can direct those four (4) questions to them in such a way that we get some kind of an idea of if the fix is recommended and if it is, what kind of timeline do we have which includes revisiting the redesign of the wall and the fitting of the rocks together, did we allow enough circulation by making the formation more compact knowing that we have to use the additional stone fits? Would sand replenishment on the bottom help? That is based on their comment about not disturbing the silt that has addressed or started to settle and dilute itself on the bottom. Would a short term fix include opening up some channel space and I am not talking about channels that would allow big trees to come through, just enough to improve the circulation as Mr. Chang has pointed out that eventually when we are comfortable with the clarity of the water, close it off. And four (4), should we invest in some new equipment for the cleaning and/or maybe even some circulating pumps that we can expedite this a little quicker. We are going to depend on you, Lenny, if you can make sure that Oceanit realizes that when we do calendar this again, that they make themselves available for that discussion. We will be writing to the State as Mr. Rapozo has pointed out because we do want to test more than one (1) general area of the pond, and you indicated to us that there might be some additional cost related to that, and we will circulate that in a separate comment to you, Gary, and copied to Lenny. I do want to thank you very much for being here. This is an unusual approach that I took to this because there are many public people interested and I will give, after they have heard your testimony, I will give everyone another three (3) minutes to speak on this subject knowing what we are going to send over and it will be up again in late May, early June that we will hear from them. Thank you very much.

Mr. Rapozo: The question I had and I thought I heard it answered but I wanted to clarify, Oceanit was the engineering consultant for the wall design for the renovation?

Mr. L. Rapozo: Correct.

Ms. Yukimura: When you send the four (4) questions to Oceanit that the Chair has articulated, can you add to the question about replenishment of the sand on the bottom, a question about the possibility and cost of a membrane as well as a methodology for keeping the silt capped.

Chair Furfaro: More specifically of what Vice Chair is saying, there is a product that is used in Lagoons and Resorts and so forth, it is called a Hypalon Rubber that can go on the bottom of lagoons, that might be more specific to them.

Mr. Mickens: For the record, Glenn Mickens. I believe that Chair Furfaro questions he is asking, I really appreciate all the input from Dickie, Mel... bringing up all the problems of this thing. I firmly believe that Oceanit is the one that has to answer these questions. The one (1) thing you brought up, Jay, about possibly buying equipment that we need to clean this up, it may be able to be subleased, you might be able to get a contractor on an as needed basis, but the point that you are making – something has to be done other than having volunteers down there that cannot pick these big logs and stuff and the cleanup is extremely important. The biggest question that you had asked, Jay, and hopefully Oceanit can answer is, is the sand going to come back and can you go down through that silt, is there sand underneath there or they are saying just leave the silt alone and it will come back. And is the sand – is that the primary reason of the cleanliness of the clarity of the water which I believe it probably is, the place you see a sandy bottom, you see clear water.

Chair Furfaro: It will be back on the agenda late May, early June.

Ms. Eichelberger: I thought there was a recommendation not to disturb the silt?

Chair Furfaro: That is correct.

Ms. Eichelberger: But isn't the storm disturbed the silt, I would think so. It would probably better to remove the silt when we get the chance instead of offer – being afraid to disturb it because the next storm it is going to be the same. Seems to me that the silt should be taken away.

Chair Furfaro: I think the way the report reads, it says not to disturb the silt and I would think taking it away would be disturbing the silt. We will get clarity.

Ms. Eichelberger: Yes, but I think that every storm disturbs the silt. Actually there was another winter storm this year early in the winter that was not that bad and still the pond was full of debris and it does not get flushed out. This storm was an exception and the other one was not and still was a disaster. The last thing, when common sense is in conflict with the measurement then they do with the turbidity and contamination, so if the measurements are good but the water stinks, what are we following? Are we following common sense or are we following the measurement.

Chair Furfaro: Thank you.

There being no objections, the meeting was called back to order.

Mr. Bynum: First, I have to start by acknowledging John Lydgate and his army of volunteers that have been out there since 1994 cleaning this on a virtually weekly basis. But I do agree with Mr. Mickens, we cannot rely on that, it is an important asset. I want to acknowledge that I believe the County has pretty much, and bear with me here, has done everything right. We all know the source of this, Hurricane Iniki changed everything, it made a lot more debris come down the river and it probably will for many years and it changed the pond. The pond started filling up with stuff and pretty soon there was not going to be a pond because the water was going to be gone. The County went through, as Lenny said,

the laborious involvement; you touch the water these days, you got Health Department, environmental studies, we hired a ocean specialist to guide us. I heard tons of ideas today and they all are worthy, I like the Chair summarized them and say Oceanit, please address these concerns about the channel, sand, membranes, whatever. This all becomes because we love this place and we care about it and we care about it deeply. The collaboration between the County and volunteers has been outstanding. Parks has been very responsive, you can argue that we need to do more and that is probably true but when the volunteers are there, just like many other things in the County, why not use them and collaborate and work together. So the County did all the right environmental studies, hired the right people, went forward with the project, the outcome clearly was not what we all hoped it would be. For those of us that spend a lot of time in Lydgate Park, it is really sad but on the other hand I agree with what Lenny said at the beginning that the lifeguard said that it was slowly healing itself to some extent, not as fast as we would like. But we might go in and try to fix it and cause difficulties. I think the Council's opinion would be appropriate to following up with this. I think the passion that people have for this place is wonderful but I do want to acknowledge the Parks Department for being as responsive as they humanly could be. I believe in these circumstances. None of us are ocean specialists but we are reaching out to those people, we are going to ask the right questions, and I know because of the level of this place, we are all going to stay on it until we get it. My final comment is what makes Lydgate a "World Class Park" is primary the natural environment, just the place it is. I appreciate that the Parks has told us that they are working on upgrading the facilities there, but I do not think we ever expected to be a big city park. We like it because of the way it is and that is what makes it World Class. If the restrooms and the facilities are better – great and Parks has taken that initiative. Everybody knows that I am willing to be critical when there is places to be critical but I really cannot think of a way the County or Parks could have done anything differently than they have done in this particular circumstance.

Ms. Yukimura: I would first thank you, Chair, for keeping this subject on the agenda because as we have all recognized that it is so important to our community. I want to thank all the people who have helped to keep this Park functional and clean and usable, and the Parks Director Lenny has made reference to the fact that this started before the present Administration and he has now been handed the unenviable task of managing it, but I do want to acknowledge him for managing it and for staying on top of it and for waiting and swimming into the waters even to check it out and get back to us. It is obvious we have not found the solution, and when you tamper with Mother Nature, which is what we did when we created that pond, it is a manmade pond and then of course we had the help of Iniki to complicate matters, it is not an easy solution to find. I think we are doing the best we can and I look forward to the day when we can figure out how to handle these debris creating, weather conditions and take care of it as it needs to be taken cared of so the park can remain to be the beloved place it is.

Mr. Rapozo: I want to just say that I am really worried about Lydgate Ponds and I am not putting any fault because they relied on what they were advised by the consultants that we hire. My comments are in no way meant to criticize the Parks Department, but I am concerned that maybe we need to get a second opinion as far as what needs to be done. If Oceanit was the designers, the engineers of this wall and the wall, is now locked so tight that we cannot get circulation, I am not so sure that Oceanit would be very willing to come forward and say we screwed up because it then it may cause some financial ramifications for Oceanit. I am worried that we have damaged a resource, and interestingly, JoAnn

talked about we manipulated that with the wall to begin with, but we never had problems. Yes, when we had storms, yes, you had debris and some dead animals and so forth, and we took care of it, the old fashion way. We had several hurricanes and major storms and we have never had a problem with turbidity and silt, it was only after we went in to fix this wall, I am positive... The turbidity and stuff happened after the event, but it fixed itself because of the natural circulation of the pond. I am no expert, I am not a wall expert or a circulation expert or currents expert but I also know that if – everything occurred after the reconstruction of the wall, then it can attribute the issues to the issue to the reconstruction of the wall, I think that is a fair assessment. I believe the reconstruction of the wall is the problem and I think it needs to be fixed, whether it is putting some channels in there to force some circulation in, or to open one (1) corner or portion of the wall to allow the water to go in and out. I do not know what that answer is, but we are getting it from Oceanit and maybe we will when they come here, but at this point, I am concerned. I am concerned what is in that silt, I do not know... we are waiting for lab results. What if something in that silt is dangerous to the human? I have been down to Lydgate and unfortunately I see a lot of tourists in there; I do not see too much local people swimming in Lydgate on the days that I have been down there. That is because they have nothing to compare Lydgate to, they come here and say "wow, water," it is like when I was in Florida and I went out and said "I cannot believe they call this a beach," so gross and ugly – but it is their beach. They come here and they see a gross, ugly beach and they think that is how it supposed to be, but who knows what is in that silt? That is my concern. I am worried and I do not know what it takes to close the beach; I do not want to close the beach, but also I do not want to keep a beach open if in fact that silt is containing some sort of bacteria that could affect people and that is a concern that we will be sending over. There are all kinds of things I guess we could consider like the liners, pumps, machines, filtration machine, and all of that, but more importantly we got to find out what is causing it so we can fix it once and for all. Again, if it is punching out some holes in that wall to allow some natural circulation, so be it. I do not know what that entails, I am sure it takes an act of Congress to get that done, but I think it is something that we got to look at and hopefully we will get some answers from Oceanit at the end of the month.

Mr. Chang: Yes, it is without question, unless you get circulation in that pond, I am not sure what they are planning to do, but we need circulation from below the surface whether it is two (2) feet down or at the surface level, it has to flush. It has to flush out that is number one (1). Number two (2), like everyone else, thank you very much to the volunteers that are out there making that beach what it is. I would advise everyone if you have a chance, while you are going up to that corridor, stop by and go into the lifeguard tower. They got a picture of Lydgate Park that is not photo shopped, not touched up of what the park used to look like, and it was a recent photo. It is a great photo that the lifeguards have a lot of pride in and I want to just take this opportunity to thank the lifeguards because I had a chance to speak to them periodically, spent about an hour with them yesterday, and I also want to commend Lenny because they all told me, I just missed him, but he was in the water as he mentioned from one (1) to the other, checking out the fish, checking out the silt. I personally was not going to go into the water because when I saw what the situation was like, I did not need to go, but I do want to say on page number four (4) when it comes to our conclusion and recommendation, the last sentence that we have discussed, it is recommended that the silt patch not be disturbed so that the pond is allowed to restore itself gradually. Last year in November when we had this agenda item up, just hours before the agenda item, I actually had an opportunity to go into the water, just to get a real

quick look, prior to the agenda update as to what the pond was looking like. Mother Nature works in very mysterious ways, because as we remembered, originally there were signs that says "steep drop, you may or can drown," remember? Well it is actually a nice now gradual, it was not anything of a steep drop, because it took five (5) or six (6) months to move but it did, but also as you remembered, when I drove down and I put my fingers in, it was sand and very few leaves. So I will agree that it does take time but that statement that says it is recommended that silt patch not be disturbed because at that time, it was prior to any kind of big rain or anything, so Mother Nature was able to flush that out. I would love to see any opening, however it is done. I would really ask Lenny if – when Oceanit comes, I would really advise them and asks them if they could talk to the lifeguards. The lifeguards have a lot of pride within that area and nobody ask them what they think, and they do not ask about the waves, currents, or anything else, and I think that could be great local knowledge because they are there eight (8) hours a day for most part of the week and the day. I do want to just say, most of the opinions is sad because in the old days when you had big gatherings there in the pavilion, everybody used to swim, and now the local people do not even want to come down there to go swim. I want to say, not even the lifeguards do not go in the water unless they have to save somebody, that is basically what is going on. It is very sad for the tourist because if you spend any time there, they read the guides, they want to go in the water, and as soon as you see them go in the water with their snorkel, I can guarantee you after a minute or two (2) they are already out because you cannot see anything. That is just a little comment.

Chair Furfaro: We are going to get more information towards the end of May from Oceanit, and Lenny, this has been said before but I would like to summarize it because we want to see the Fire Chief before we break for lunch. I heard Vice Chair Yukimura indicate how appreciative she was of you actually going into the water and making your own observations but I want you to know, we were not talking in terms of the background music of "Jaws". We had a clean report at this point from the Department of Health, but we want them to expand those questions as summarized by Mr. Chang's comments, but Gary Ueunten has assured us that he will work closely with us. Lenny, thank you for all your kōkua on this project and we do want to get it to the best place we can before the summer starts.

The motion to receive C 2012-148 for the record was then put, and unanimously carried.

There being no objections, C 2012-151 was taken out of order.

C 2012-151 Communication (04/20/2012) from the Fire Chief, requesting Council approval to apply for, receive, and expend the 2011 Assistance to Firefighters Grant in the amount of \$77,936.00 to purchase a 19' Boston Whaler to be stationed at the Kapa'a Fire Station, replacing the existing aging jet boat, total cost of the 19' Boston Whaler, including tax and shipping is \$97,419.00. The remaining balance after utilizing grant is \$19,483.00 will be funded from the Fire Department's Public Safety Equipment Account #001-1102-566.89-06: Ms. Nakamura moved to approve C 2012-151, seconded by Mr. Rapozo.

There being no objections, the rules were suspended.

Chair Furfaro: This is way overdue I believe, Chief, in the replacement of this recue boat, so let me just give you the floor.

ROBERT WESTERMAN, FIRE CHIEF: Chief Robert Westerman for the record. As you mentioned, Chair, it is way overdue. We have been operating out of Kapa'a with a Jet Boat and a wonderful donation by the community by the way. The problem is the Jet Boat creates an issue when we go up Wailua River, we were just talking about it, everything that is coming down Wailua River, well usually when we have to go up Wailua River it is because all this stuff is coming down the river, and because it is a Jet Boat, it sucks in the water and propels the water, and so it gets clogged and jammed. It is very limited in size and capacity. What you may or may not remember, over the last six (6) years that I have been here, we had two (2) dive sessions looking for community members. The Jet Boat does not afford us the opportunity to have our dive crew safely attached to anything, so we are borrowing from other people. State land, we do have a deal with them if we need it, but only if they are available and we can get a hold of them because they keep it locked up at the pier, then we can use that. This really – it is coming onboard to replace a unit that we already have. Again, we are replacing the Jet Boat and it will improve the service that we are able to provide and it will increase the safety for our fire fighters. Also, we used the Jet Boat on a few occasions outside of Wailua River and into the ocean fronting Kapa'a area while searching for a young man that was drowned down in that area, and because it really does not have the power, it was difficult for it to maintain safety with our scuba divers attached to it because it is critical when they are under the water that they have some anchor points. Literally, the currents were so strong that they were pulling the Jet Boat instead of the Jet Boat kind of tethering for them. We realized that we need something that can do both things and do them safely, not necessarily our big Radon, although it is also available, but the Radon in that situation is off the coast and is kind of the resting point while we have a smaller boat that is working with the divers on the inside, and then of course it can transport it around the island and work with the other boats that we have. We had an opportunity through our Homeland Security Grant, so the cost of the County is twenty-five percent of the cost of replacement, so we are looking forward for that opportunity.

Chair Furfaro: Thank you for that overview, Chief, and as you said, seventy-five percent of this will be covered by the fire fighters grant at the Federal level, our share is \$19,483.00. I am very familiar with a Boston Whaler, it is a good small boat. Let us see if there are questions from others.

Ms. Yukimura: Chief, it does sound like a good thing to purchase or borrow; you have a place to keep it and a way to maintain it?

Mr. Westerman: Good question. We currently have a place in Kapa'a because we are going to be replacing the unit in Kapa'a. It is a little bit bigger than that unit, so we are going to have to add some temporary extension on to that facility, but we do not want to do anything permanent because we are working on moving the Kapa'a Station and when we move the Kapa'a Station, then that will be part of that move. We are already doing ongoing maintenance with our existing Jet Boat and actually it started getting more and more expensive, parts availability is becoming an issue because of its age, and we have the same problem with our jet skis, it is kind of the same thing only it is a jet ski with those huge float system around it, and so luckily we wore them out fast enough that they are into new jet skis before it gets too expensive or run out of parts.

Mr. Rapozo: Chief, what happens to the old Jet Boat?

Mr. Westerman: It will go to auction.

Mr. Rapozo: Okay. And I noticed in this year's budget there was a line item for a Boston Whaler as well. Is this the one?

Mr. Westerman: That is the line item that is in the budget, so we are putting it in the budget already.

Mr. Rapozo: Okay but the one in the budget, if I am not mistaken, was a five (5) year lease?

Mr. Westerman: Yes, and we converted that to be the \$19,483.00.

Mr. Rapozo: Okay. And I did not get a chance to see the supplemental yet, it came in late yesterday, so I will take a look at it.

Mr. Westerman: And it does reflect that in the budget correctly now, yes.

Ms. Yukimura: Just as a follow up to Councilmember Rapozo's question, it is in this year's budget so you will access it – I mean this coming year's budget, fiscal year 2013 – right now it is a request for approval?

Mr. Westerman: Right.

Ms. Yukimura: And then you will consummate the contract and then the moneys...

Mr. Westerman: That is still four (4), five (5) months down the road, so it will be in the new budget year before we get to that.

Chair Furfaro: Is everybody okay on that? Do me a favor, Chief, this is something that comes up all the time with me, would you make sure when we do auction the current piece of equipment, that you show us how you are going to handle the salvage credit, because I believe that the salvage credit should go back to your Department for your small equipment and so forth. I just wanted to make sure that happens.

Mr. Westerman: Yes Chair, but I think you are going to have to get from Wally Rezentes, because I believe that you are correct, the salvage credit does not come back to the Department, but I would have to clear it with them to make sure what the answer is.

Chair Furfaro: I will ask Wally, but I just want to make sure that you sell assets from your Department we want to make sure that your Department gets the credit back to your account. I will follow up with Wally.

Mr. Mickens: I just want to acknowledge and thank the Chief for the great work that he does. The Water Safety Program with Monty Downs, my friend and I think he is doing an outstanding job with his total program with his lifeguards and everything. Thank you.

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the different work, the operation of this County. I will submit my questions in writing.

Chair Furfaro: Well I will fulfill that promise to you as the first six (6) years, I was the Finance Chairman and I regularly made my own analysis and shared it with whoever wanted. I do want to point out before I recognize Mr. Bynum that period nine (9) on the (inaudible) the Charter requires them to report to us within forty (40) days of the closing which basically puts them right on target by just getting the report right now from the period closing in March. It may not be as simple as we would like it to be as it is a requirement of the Finance Department and the Charter.

Mr. Bynum: I just wanted to say Councilmember Kualii raises good questions that I have heard previously from Councilmember Nakamura that these reports are important and this is pursuant to the budget ordinance and so I suggest during budget we – because I think what we want is a summary report. Not that we do not want all of this report available to us, but that the Finance Department gives us a summary report. Are we on track, are there red flags, how does this look? And we probably can put that in the budget ordinance to ask for that summary report and a little more specificity for next year.

Ms. Yukimura: We may even want to change the Charter and lessen the time because now presumably with better information technology those facts and statistics should be available faster.

Mr. Rapozo: For your information I have submitted language for a Charter amendment regarding the financial reporting to the Council. It is being drafted right now, I have not seen the Resolution, but I believe that it will be done before the June 1 deadline set by the Chair, but I think right now the Charter requires them to submit quarterly reports. The Charter amendment will require monthly reports. I understand right now that each department gets their monthly summary on a monthly basis, so it is not unreasonable for us to ask for those reports as well.

Chair Furfaro: We get them. We get the monthly reports. I have already done the analysis for eight (8) months.

Mr. Rapozo: Okay, well I have not seen them and maybe if we can get that circulated to the Councilmembers; I knew we got the quarterlies that show up on the agenda, and if we are getting the monthlies, that is fine. The Charter only requires quarterly.

Chair Furfaro: That is right.

Mr. Rapozo: My attempt is to require a monthly – more for me, what I really want to see is the budget versus actuals. As we plan out our budget year, to me, that is the most important piece of information – is where are we and are we over budgeting going forward. That should be out and I am hoping that we can get that out shortly.

Chair Furfaro: The Charter requires the quarterly reports, the Administration has been accommodating us with monthly reports that I do an analysis on, and if we take a short recess, I will be glad to go downstairs and share my quick summary with you if you would like, or I can just put it in your mailbox. I

really only watch only the five (5) big accounts - Public Works, the Landfill accounts in Solid Waste, Highway Fund, and so forth; you will see it on my worksheet. I will also share with you, last month, they did give us payment for the TAT tax, so do not let that distract you because it looks like we collected more tax in the transient accommodations, but the State is only paying us twice a year now. I will be glad to go put that in everybody's mailbox later today.

Ms. Yukimura: It is so wonderful to have this kind of interest in tracking the budget and how we set the budget now which is what we are doing because it has not always been the sense of the whole Council and it is good to have that. Maybe as different suggestions are coming up between budget and Committee of the Whole - Finance in Committee of the Whole, we might develop a clear request to the Administration about what kind of information we need on a monthly or quarterly basis and what format we want it in. That might develop a regular process and that might be circulated and it may not just be budget statistics, it may be vacancies, some of the personnel data and a few other things. I am not trying to define that right here and now, but I thought maybe the Finance and Chair can look at that.

Chair Furfaro: If you recall on the staffing piece, I was quite disappointed, they are required to turn it around in ten (10) days. The last report we had on staffing vacancies, it took them fifty-nine days to turn it around to us and then I extracted from them a commitment that their first step of improvement would be to turn it around in thirty days. It is something that definitely can improve over steps but before we start tomorrow I will share the eight month analysis I did on the five main accounts so you have something. It is not just the fact of the matter is we have a couple of financial guys on the Council right now, the bigger problem is making sure the performance and the variables is done across the street. I do not think when I signed up for it there was a criteria for me to be a financial analyst as well, but we have to convey to them the information we need.

Ms. Nakamura: I just wanted to say that I agree with Councilmember Kuali's assessment that it would be helpful to have something less than two hundred fifty pages to review every quarter. It is not to me so much of getting the monthly, seems like we have been getting that but it is the presentation of the information in just an executive summary format that would give us a snapshot of where we are at. I agree with Councilmember Rapozo, the actual - what is budgeted and what is actually spent so we can assess where we are at. I thought I had worked on something on the last budget proviso but I never really - for some reason, so I think we need to follow up and have a discussion. If it is in the Finance Committee, that is fine, or in a sub-Committee, whichever way, I think we just need to have that discussion.

Chair Furfaro: I think if the Finance Chairman wants to put it on the agenda, I will be fine to entertain it. Let us be very clear on what the communication is and I will share what I do with you folks, but I want to remember when we went through our preliminary budget, we had the accounting people come and tell us how frustrating it was for them being what they called understaffed. But if the Finance Chair wants to put something on that we can review this with some talking points, it might be really the next step.

Ms. Yukimura: I just wanted to say regarding the personnel issue and the difficulty getting timely information that may be related to the fact that they are doing everything manually and with respect to personnel information

and I guess by us asking for the kind of formatted information we want, we begin to uncover what some of the administrative deficiencies or problems are in getting that information.

Chair Furfaro: I would agree in this day and age with all the money we spent in IT and computers how that these pieces are just not electronically updated, but we did an extracted commitment on thirty day turn around on the personnel pieces and we are meeting the requirements of the Charter right now with the forty days after closing, but we can continue this in Mr. Bynum's Committee if he chooses to put it on the agenda.

Mr. Kualii: I did just want to say too that it might be a matter of staffing because to me when I look at some of these reports, these are just the reports that you can hit – send me that report and it prints. This is not anyone taking the information, calling it just a little bit and putting in some kind of summary format and even just maybe how the cover page of this one (1) report which is the statement of expenditures and encumbrances, the cover page is general fund, there are only seven line items or so and a total of a hundred and seventeen million. But the way the appropriations are broken down, it just has one called general government for thirty-seven million, three Public Safety, Public Safety, Public Safety for twenty-six million, twenty-three million, seven hundred thousand and then Public Works ten million, Parks and Recreation ten million, Public Welfare five point seven million – so that totals up the a hundred and seventeen million that is in the General Fund but that does not tell me anything, it is not useful to me. And what is expended by each of those groupings, and what is encumbered by each of those groupings, I can give percentages and know that we are way off because we should be seventy-five percent of the way through and we are not, so then I worry because there are millions of dollars that we may not be getting in revenue or even more that we may not spend because we said we would spend this much and I guess all of the spending is going to happen in the third quarter but this information is pretty important and if we just get it with a little more clarity and a little bit more putting it into summary form. I suppose we could take that two hundred and forty-eight pages and task our staff with that but it should not have to be like that.

Chair Furfaro: No, no.

Mr. Kualii: It should easily come from Finance.

Chair Furfaro: It should come from across the road.

Mr. Kualii: And if accounting – and I am concerned too about the accounting manager who came before us and said about the assets because that was one of my questions too and where is the report on that? I think in one of our provisos we get a report of the purchases of equipment and furniture, but bigger than that would be some kind of inventory of our assets and what that value is, and there was discussion earlier about the Fire Chief having a good plan for replacement of the fleet vehicles. Ideally, from within Finance is where we can know how we are doing and if we are on track, because vehicles are appreciated (sic) and their life is over and needs to be replaced, and we can plan ahead more than one (1) year budget. This information is really important and I am looking forward in the future to at least understanding more about what is the question to ask so that we have the information we need and to make us better able to do our job.

Chair Furfaro: I will have for tomorrow morning my last eight month and a little piece on the comparisons of what I follow and then maybe Mr. Bynum can then fit it into some kind of a narrative for an agenda item.

Mr. Bynum: I am very much open to that but we are in decision making starting tomorrow and so I do not know if anybody is looking at language for the proviso because I at least asked for that executive summary and then we can follow up with a more detailed discussion about reporting.

Chair Furfaro: I think that is what Mr. Rapozo was stating.

Mr. Rapozo: I guess it would be interesting to know what their capabilities are that they run over at Finance, I am not aware of it. But I know that my business is nowhere near a two hundred million dollar business, but my software, I use QuickBooks and it is four hundred and ninety-nine bucks, and at any day of the week I can go there and print out a chart of accounts. If I just want to see what I have spent in the last seventy-two hours, I can do so just like that. I would bet that the run would take a little longer in our system because we are talking about a lot of transactions, but I have to believe that no matter what we have, that capability exists where if we wanted to see a quarterly report, monthly report on the expenditures and revenues, budget versus actual, which QuickBooks does relatively easy, and I am not an accountant but that program allows me to print an account. I got to believe that we have that capability across the street and if not then we need to go get it, four hundred and ninety-nine dollars to buy QuickBooks and get it done, because it is vital for us in decision making. I appreciate the Chair's analysis of the data and I am anxious to see that later today, but I think that is not too much to ask for Finance to provide to us on a monthly basis.

Chair Furfaro: I am sure the AS400 can do more than just QuickBooks, and the button you are talking about is called print screen.

The motion to receive C 2012-150 for the record was then put, and unanimously carried.

Chair Furfaro: I would like to keep the top item on the page four (4) towards the end of the agenda today in the event we need to go into Executive Session. Let us go to claims please.

CLAIMS:

C 2012-154 Communication (04/20/2012) from the County Clerk, transmitting a claim filed against the County of Kaua'i, by Philip Medeiros, for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-154 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang.

C 2012-155 Communication (04/25/2012) from the County Clerk, transmitting a claim filed against the County of Kaua'i, by Watumull Plaza, for property damage, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-155 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang.

C 2012-156 Communication (04/25/2012) from the County Clerk, transmitting a claim filed against the County of Kaua'i, by Brian Esler, for damages to his personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-156 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang.

C 2012-157 Communication (04-27-2012) from the County Clerk, transmitting a claim filed against the County of Kaua'i, by Progressive Casualty Group Insurance, Co., for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-157 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang.

Mr. Rapozo: I just have one (1) question, the report back part – do we have a quarterly report from the Attorney's Office?

Chair Furfaro: We get a report if the item exceeds five thousand dollars.

Mr. Rapozo: Well.

Chair Furfaro: That is what we are supposed to get.

Mr. Rapozo: We are supposed to be getting a report back – they come back to us if they need settlement authority, but as far as a report back on all these claims and I have asked for that in the past. I think we should get as well. I have received a couple of calls from constituents and I know Mr. Chang has and I am sure some of you as well that these claims go in and gets denied just like that, sorry denied, we do not believe you. I want an opportunity to review what goes on with our claims and in fact if we are paying it out. I think Mr. Chang knows which one I am talking about where I thought should have been paid, and then I guess the other question would be for us to research, maybe Mr. Morimoto, what authority does this Council have if we want to revisit a claim that was initiated by a constituent and do we have an authority to settle a claim against the advice of the County Attorney. For example, a rubbish truck driving down the road, a thing fly out of the bed, the guy gets the license plate number down, he has a cracked windshield, four hundred and fifty dollars, and gets denied. I understand that there could be some abuse of claims but do we have the authority I guess to bring the claimant in, and I know we have done it in the past with a couple of claimants that were denied, but I am just curious as to what our authority is.

Chair Furfaro: Peter, can you revisit my statement because I think there is a minimum requirement of a claim coming back for settlement, if you can look into that and put them all in a series of questions for Mr. Rapozo?

Mr. Rapozo: Thank you.

The motion to refer C 2012-154, C 2012-155, C 2012-156 and C 2012-157 to the County Attorney's Office were then put, and unanimously carried.

COMMITTEE REPORTS

HOUSING / TRANSPORTATION / ENERGY CONSERVATION & EFFICIENCY COMMITTEE:

A report (No. CR-HTE 2012-08) submitted by the Housing/Transportation/Energy Conservation & Efficiency Committee, recommending that the following be received for the record:

“HTE 2012-10 Communication (04/24/2012) from Committee Chair Yukimura, requesting the presence of Ben Welborn of Landmark Consulting Services to discuss the report titled “North Shore Path Alternatives Report,”

Mr. Kualii moved for approval of the report, seconded by Ms. Yukimura.

Chair Furfaro: Just a footnote on this, I understand there is a meeting on the 15th and Vice Chair Yukimura will try to attend on our behalf. Is that my understanding, are you going up?

Ms. Yukimura: I will if we finish our last budget decision making on time.

Chair Furfaro: Understood. So that is the 15th and 4:30 is the tentative posting for that, but you will follow up on the North Shore piece.

The motion to receive CR-HTE 2012-08 for the record was then put, and unanimously carried.

ECONOMIC DEVELOPMENT & RENEWABLE ENERGY STRATEGIES COMMITTEE:

A report (No. CR-EDR 2012-03) submitted by the Economic Development & Renewable Energy Strategies Committee, recommending that the following be received for the record:

“EDR 2012-07 Communication (04/23/2012) from the Director of the Office of Economic Development, requesting agenda time for a presentation by the Virtual Enterprise Class, Kapa’a High School, on their Virtual Enterprise Business 808 FUSE (Fun Using Sustainable Energy),”

Mr. Kualii moved for approval of the report, seconded by Ms. Yukimura, and unanimously carried.

FINANCE / PARKS & RECREATION / PUBLIC WORKS PROGRAMS COMMITTEE:

A report (No. CR-FPP 2012-07) submitted by the Finance/Parks & Recreation/Public Works Programs Committee, recommending that the following be received for the record:

“FPP 2012-07 Communication (04/26/2012) from Committee Chair Bynum, requesting the presence of the Director of Finance and Real Property Assessment Division to provide a briefing on matters regarding real property taxes,”

Mr. Kualii moved for approval of the report, seconded by Mr. Chang.

Chair Furfaro:

Any discussion?

Ms. Yukimura: Yes, Mr. Chair. I have not completed reading and there are some corrections to be made, could we defer for one (1) meeting?

Upon motion duly made by Ms. Yukimura, seconded by Mr. Bynum, and unanimously carried, CR-FPP 2012-07 was deferred.

RESOLUTIONS:

Resolution No. 2012-22, RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO DEFINITIONS OF "SHALL," "MUST," AND "MAY": Mr. Rapozo moved to approve Resolution No. 2012-22, seconded by Mr. Kuali'i.

Chair Furfaro:

Is there any discussion on this item?

Mr. Bynum: I have a lot of questions about this for the County Attorney. If we are going to vote on it today, I need to be able to ask those questions.

There being no objections, the Council recessed at 2:12 p.m.

The Council reconvened at 2:33 p.m., and proceeded as follows:

Mr. Bynum: This is regarding the Resolution that is before us for a Charter amendment to say, in essence, this is my paraphrase, shall always means shall, and must always means must, and may means may, right? And we can read the Charter amendment but this issue came up regarding a salary ordinance last year in September and there was a County Attorney's opinion that we voted to release to the public, and based on that opinion and general observations and discussions, I have a series of questions. First question is, has anyone analyzed the Charter for each instance of shall, may, or must and determine what the implications of them or rigid interpretations of those words would be.

JENNIFER WINN: Deputy County Attorney, Jennifer Winn. Obviously we have analyzed the Charter for various reasons at different times with something else in mind focusing us, but in regards to every single shall, no, we have not.

Mr. Bynum: Charter correct?

So the words shall appear frequently in the

Ms. Winn:

Yes.

Mr. Bynum: As do the words must and may, and so just reading of the Charter for me raises questions. One is the Charter says the Planning Commission shall have seven (7) members, so would that mean we would always interpret shall strictly that if there was a vacancy on the Commission, they could not meet until the vacancy was filled because they would not... it says you shall have seven (7) members and if there was a vacancy, there is not seven (7) members.

Chair Furfaro:

Any discussion?

Ms. Yukimura: Yes, Mr. Chair. I have not completed reading and there are some corrections to be made, could we defer for one (1) meeting?

Upon motion duly made by Ms. Yukimura, seconded by Mr. Bynum, and unanimously carried, CR-FPP 2012-07 was deferred.

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this Supreme Court guidance on when shall means shall right? Or would it be in conflict with what the Supreme Court has ruled?

Ms. Winn: The case law is going to be the case law no matter what. How they applied the language may be different with the language that would be in the Charter with this Resolution versus how it would be without it. I cannot say for sure how the Court would analyze it, but if this language is in the Charter, they would probably take that as evidence of the Council's intent or the voter's intent which does go into the analysis. I do not know whether a Court would say okay that intent is absolute so it has to be mandatory, but it would be evidence of that intent.

Mr. Bynum: I do not want to belabor this, but if we have not done an analysis of the Charter and the implications of having a more rigid interpretation, I am uncomfortable when I know that the voters are going to pass it, I would, I would vote for that. Since I am a Councilmember, I have to read these opinions and kind of get into the legal world where things are much more nuanced. Would you agree with that?

Ms. Winn: Yes, I can agree the law can be very nuanced.

Mr. Bynum: I just pulled this example out of a hat about the Planning Commission, and your answer which is not uncommon for attorneys is - well I cannot answer that, it could be interpreted this way, it could be interpreted that way. I am afraid that if we go from what has been the norm, which this issue has not come up that often about where shall and may plays that we are going to invite a whole bunch of inquiries, a whole bunch of challenges. Just using the Planning Commission as an example, if somebody passes away, moves off island, say I had enough of this Commission and I quit, it takes quite a while to get a new Commissioner. The Mayor has to identify somebody, we have to do interviews, and so I am concerned that it will throw a wrench into things. I will give another example, I just asked in the hall whether I heard that the Salary Commission may be sending us a recommendation to increase the salary of the Police Chief; and the Fire Chief, I have not seen it, but I have heard it out in the community. This whole thing came from a concern that they missed, the you shall submit any salary changes by March 15, and so if they send that to us, if we have that kind of interpretation, we cannot vote for that because it is after March 15. So that is another example, that is real world right before us right now. I think we can continue this discussion and we could go through the Charter step by step and be here all afternoon, but I think we are likely to run into some of the same concerns, well that depends and no, that would be subject to this challenge, and when I read this I am like this is not a County Attorney's opinion that shall does not always mean shall.

Ms. Winn: I need to stop you there because that bothers me – shall does mean shall.

Mr. Bynum: Okay.

Ms. Winn: Shall means you are supposed to do this, you are supposed to do it within these parameters. The difference is whether it is mandatory or directory, and you are right, those are legal terms that the case law has which has to do with the consequences if you do not do it; you are supposed to

do it - shall means shall. It is just what are the consequences if for whatever reason you do not.

Mr. Bynum: Does must mean something different than shall?

Ms. Winn: I do not think we analyzed must that much yet. Must also has the meaning that you are supposed to do it.

Mr. Bynum: Because it is also in our tax ordinance, there is shall and then later it says – it kind of gives you direction right in the ordinance, well under this circumstance that shall is directory and under this circumstance, that shall is mandatory.

Ms. Winn: That is exactly the type of thing the Court will look at to analyze the Legislature's intent, I mean if it is right there in the language that there is a consequence that you cannot do an appeal if you do not do it by this deadline, that is clear intent of the Legislature's wanting it to be mandatory versus if there is something that says real property (inaudible) is not going to be penalized if they do not send out the notices by this date; that is clear intent that the Legislature made it to be directory.

Mr. Bynum: This is what is in my head so I want to respond. Earlier in this meeting we talked about a solar water heating bill that did not pass. When I read that bill that did pass, it says the Legislature's intent is this, and I do not know how you get more clear about Legislative intent, but yet the law is not being applied that way. I had hoped for a more robust analysis of what is the implications of us putting this language in because it does not just say in the amendment shall means shall. It says shall may be construed as mandatory, not directory, but yet the Hawai'i Supreme Court is saying, no and I do not know if that is a conflict or I do not think it would undo the Court's opinion that there are examples when it does not.

Ms. Winn: Right, the Court's opinions would still be there unless they overturn their own opinions, and generally, the law already is generally shall is mandatory, that is generally what the law is. There are going to be instances where when you look at the factors that the Court tells you to look at, then it might be directory.

Mr. Bynum: I think I have made my point and you have given me answers that are helpful about how I vote on this Resolution.

Chair Furfaro: Before we go any further, I want to make sure we understand something, it was the County Attorney's Office that told us that we can go back to the Salary Commission just three (3) weeks ago.

Ms. Winn: Right, I think it was based on the opinion that Ms. Clark wrote.

Chair Furfaro: And it was based on the opinion about the mandatory date specific March 15.

Ms. Winn: Yes.

Chair Furfaro: I think we got to be consistent about some of the instructions that we are getting as well, because we sent that back. After that testimony we sent back to the Salary Commission a request to evaluate those two (2) public safety positions.

Ms. Winn: Right.

Chair Furfaro: I just wanted to make sure we are clear on the record.

Mr. Rapozo: Jennifer, just so that the public understands, you were not the author of this opinion, it was Mona Clark?

Ms. Winn: Correct.

Mr. Rapozo: The reason these cases I believe that were referenced in the opinion ended up in Court is it did not have a governing document like a Charter that clarifies what shall meant. As I heard you say earlier, the fact that the Charter would have expressed the Legislative intent that would have been used in the analysis as well?

Ms. Winn: Correct.

Mr. Rapozo: So there is a possibility and I am not asking for your – because obviously we do not know what the Court would rule, but there is a chance or possibility that in fact it may have not even made it to Court if the parties involved knew that shall meant shall, that shall was mandatory.

Ms. Winn: Yes, like I said it would definitely be evidence of the Legislature's or the people's intent which is the main factor you are looking at. It is not the only factor you are looking at.

Mr. Rapozo: Exactly, but I think it is a big factor and I think that was the purpose Mr. Furfaro put this out, so that we could clarify once and for all what the Legislative intent was. I am going to be supporting this and getting this out there and I realize there are many shall, may, and must in the Charter, and unfortunately, to go through each one and most of them would never ever be an issue, it just will not because we do it the right way. Every so often we will come across a situation – I mean it is simply things like submitting a report, shall submit a report by this date, and it is not being done. That is true. Shall means mandatory like you said, what is the consequence if it is not done? Is it – you got to wait to turn it in if that is what the Council says, then it is what the Council says. Does it rise to a level of a Charter violation which is a misdemeanor, I think that is the question, really, what is the consequence of that specific shall or must. I just believe that a lot of these cases would not have ended up in Court if in fact it was clear to the parties involved that the shall was mandatory versus directory.

Ms. Winn: Right.

Chair Furfaro: Jennifer, before I go to Vice Chair Yukimura, this terminology of shall and must is actually in the County Code.

Ms. Winn: Correct.

Chair Furfaro: What is the role of the County Code?

Ms. Winn: I am sorry?

Chair Furfaro: The role of the County Code?

Ms. Winn: The role of the County Code... it is the next set of laws after the Charter.

Chair Furfaro: That is kind of a summary of the laws reflecting the intent of what is in the Charter.

Ms. Winn: Right.

Chair Furfaro: But that is the verbiage in the code.

Ms. Winn: Right.

Ms. Yukimura: Jennifer, the line of questioning from Councilmember Bynum suggests that if we pass this Charter amendment we might be generating a lot of lawsuits. For example, if the Planning Commission shall consist of seven (7) members and one (1) position is lacking and they rule on a zoning matter, and approve a zoning matter, those opposing a zoning matter could say that the Charter was violated by not having seven (7) members act on the issue and therefore that their action was invalid.

Ms. Winn: Yes, and that would be one (1) of the reasons why a Court probably looking towards these other factors and saying okay this is absurd.

Ms. Yukimura: But if the Charter says that a shall shall be mandatory then it is mandatory. It is not about interpretation anymore because we have said by Charter that shall shall be mandatory. It is my understanding of the Court interpretations are that where it is not stated that shall shall be mandatory you can go through this interpretation process and discard where the consequences are absurd or where there was no vested interest affected or things like that but if the Charter says that shall shall be mandatory then I do not know what – it is the Supreme Court Law as long as – versus a County Code or even I think State Statutes and the people have said shall shall be mandatory.

Ms. Winn: Yes, but the Court will look at the language of either the Charter or an ordinance or statute, and if there is an absurd result will say that that cannot be what was meant...

Ms. Yukimura: How can you say that it is absurd, however, if the Charter says it is important to have seven (7) members sitting and hearing and making a decision? Couldn't the other side argue that it is not absurd and that it was the intention that there be seven (7) members or a decision cannot be made, and does it not generate what the outcome, it still is going to generate a lot of Court – a lot of lawsuits, or it could, to have this Charter amendment that has been passed without really looking at how each shall affects, interpreted in a mandatory fashion, affects the Charter and functioning of County government.

Ms. Winn: Yes, it could present more lawsuits and yes it can be argued that it means this – almost anything can be argued and well there is not always a clear right answer to a legal issue, but there is case law where there is actual language in a statute or someplace that a Court says it cannot mean that because it is absurd. I do not know the cases off the top of my head right now so is there a possibility that a Court could say even if it says mandatory, we are still going to say it is directory, yes.

Ms. Yukimura: But doesn't the Court method of analysis say that if there is an explicit statement that shall be mandatory that that is going to have quite a bit of weight?

Ms. Winn: Yes.

Ms. Yukimura: So when we are saying that something shall be mandatory without really knowing the implications of it, it is dangerous. Is it not? Because the Planning Commission – and it will affect all Commissions if in the Charter the Fire Commission, the Planning Commission shall have so many members then all of their decisions become subjects of lawsuits for those who do not like the decision.

Ms. Winn: It could.

Ms. Nakamura: This is to follow up on JoAnn's line of questioning – but doesn't every Commission/Council have a set of rules by which they conduct themselves so that we may not have seven (7) sitting members, we may have six (6) in the case we had a vacancy at one (1) time, but our rules allowed us to continue decision making with less than the seven (7) required members based on the Charter. Our rules allowed us to make decisions if we had a quorum and a majority of members agreed with a decision.

Ms. Winn: There is something else too – when the Chair asked me what does the County Code mean and I said it is below the Charter, so there are gradations of the law. The Charter is the ultimate document and it is supposed to be broad, and the ordinances are supposed to refine, give more details, and then rules are supposed to give even more details to the ordinances. Rules cannot though go against what the ordinances are, or the Charter, they can expand on them but they cannot be something different. If the Charter was viewed to mean that there has to be seven (7) members and that is mandatory, your rules cannot say we can have six (6).

Ms. Nakamura: I am not saying that we can have six (6); to conduct business, you can have... you may not have everyone sitting at the table.

Ms. Winn: Right, but that does not go against the fact that the Planning Commission has actual seven (7) members, only six (6) of them happen to be there that day. So that is a little different.

Ms. Nakamura: That would be different.

Mr. Kualii: I was going to say in the Charter the Planning Commission it says the Planning Commission shall consist of seven (7) members and it does. It does not consist of five (5) or nine (9), it is seven (7). By members, I believe any reasonable person would believe, it means seven (7) seats,

seven (7) positions, not seven (7) live, breathing bodies that show up to every meeting and is sitting and hearing and making the decisions. It is absurd to use that as an example, you said the word absurd, other people have said the word absurd. I would think in a practicing democracy there is established bodies that govern, and there is an established makeup of that body, and that body like this body right now is seven (7) positions, it will never be nine (9) or five (5) unless the Charter changes and the people vote, it is seven (7) positions. But of course, there could be a vacancy and of course there are things such as quorums and what it takes to operate, so to say that a Commission could not operate if they did not always have seven (7) live bodies showing up and sitting and hearing to make decisions, that is absurd and I think that is what you were saying but you have not really said it.

Ms. Winn: Well to clarify a little bit, if you look just at the language, the Planning Commission shall have seven (7) members, it is not saying that it is entitled to seven (7) members, so it is supposed to mean members. But it does not mean that they have to be at each meeting.

Mr. Kualii: And it means that they have to have seven (7) members that is the makeup.

Ms. Winn: If you view it as mandatory.

Mr. Kualii: And there are no problems with operations if it is mandatory because you can operate – what it is now, the quorum for the Planning Commission to meet, five (5)? So if there was two (2) vacancies, they could still meet and do business?

Ms. Winn: I am viewing vacancies a little bit differently than you are.

Mr. Kualii: It is a seven (7) member body, it is required to be so.

Ms. Winn: Right.

Mr. Kualii: But they have a quorum of five (5), I am just going to assume they do and so they can do their business with five.

Ms. Winn: Right but they still have to...

Mr. Kualii: And whether it was mandatory to be seven (7) or not, if they had four (4) they could not do their business. The shall is not presenting a problem here if it is mandatory for them to do their business. Tell me how it could present a problem that they would not be able to do their business because they did not have seven (7) live, breathing bodies sitting, hearing and making decisions which mandatory means they have to have, which I do not think that is what it means. It just means it is seven (7) positions that make up the body – positions that are vacant or not.

Chair Furfaro: I guess, Jennifer, in this particular case the burden to see all the vacancies are filled rests with the Administration; whether they are absent or they are traveling and so forth is a separate issue, but we can by our rules reappoint a Commissioner who is in his 6th year, but until we fill that

vacancy, he can be extended for another eighty-nine (89) days. It really puts some factual burden on the Administration to see that they are planning timely in every three (3) years that they will create a vacancy and so forth, to not let a unappointed Commission seat go vacant for longer. It puts a certain amount of burden on the Administration to see that they are timely with their appointments and so forth so that we can say there is not any empty appointed positions on the Planning Commission, but when they do business, they can do business with absentees, travel, and so forth, as long as the seven (7) appointed positions, none are vacant and that burden is on the Administration.

Ms. Winn:

Okay.

Chair Furfaro:

That is my view on it.

Mr. Rapozo: There is a lot of shall well beyond the Planning Commission, but I just wanted to say that the Charter, when you are talking about that section, it is Planning Commission's organization, that is what the title of that section is. It is exactly what KipuKai has said. It mandates the structure of the organization of the Commission that the Mayor cannot come in and say well this week I want eight (8), next week I want five (5), it is seven (7) that is the structure of the entity called the Planning Commission. The operation and how it runs, I think you know, Jennifer, if somebody was to sue and say that action was no good because you had only six (6) members, the Judge would not even – that would not pass. I think the number seven (7) is the organization that is what it says, the organization of the Commission, that Commission will have seven (7) members. At some point, we had some with five (5), we had some with seven (7), and I think we even had some with nine (9), but the title of that section is Planning Commission that in fact the Planning Commission shall consist of seven (7) members, that is what the Commission will be made up of. I just wanted to make that clear that it was organization and it was not – the Charter does not say they need seven (7) to operate.

Ms. Winn: Right and I know we have been using the Planning Commission as the example here and I have not analyzed it completely, but what I am trying to say is just that if you take it to the extreme and say that the word shall is mandatory in these situations, when it is mandatory it basically means that if you do not do it, it cannot be done. It is easier to talk about deadlines than Planning Commission. If you do not do it by this date, it cannot be done. When it is directory, you are still supposed to do it, it is just that the consequence for not doing it is not that it cannot be done, I mean you might be evaluated poorly or something else, there could be consequences, but that is not the consequence that it cannot be done.

Chair Furfaro:
Salary Commission by March 15.

And that is why we have date specific on the

Ms. Yukimura: But couldn't someone argue that if shall is mandatory and that the Planning Commission has to consist of seven (7) members that it was the intention that seven (7) members make a decision if somebody is absent and there is six (6) – or four (4) to two (2) decision that if the seventh member had been there to argue the position that it might have changed and therefore that a decision without seven (7) members would not be appropriate or even whether or not there is a quorum, well I guess the question would be whether

a quorum is legal to require if the shall consist of seven (7) members is mandatory, is that the question that would be before the Court?

Ms. Winn: It could be argued that way and I have not done an analysis on the Planning Commission, but I think it is unlikely just because when you go into a Court – statutory construction, how they would view, they would start off with the words of the words. So the first thing they would be looking at is the word mandatory and whether or not it is about organization or something else – they would be looking at all the words. From there they would say, do these words accurately reflect the intent, and there is a whole line of things you look at when you are doing statutory construction. Again, I just find it unlikely that a Court is going to say that nothing can be done unless there are seven members, but I fully have not analyzed it.

Ms. Yukimura: Well I mean we are not asking you to predict what the Court would say. We are asking you to say whether or not this would – I mean look, just this issue alone is causing so much discussion, and we have not looked at every shall in the Charter, and so the question is how will this explicit direction that shall shall be mandatory affect County operations is the question and should we do it without knowing. To me that is the policy question. When there is already a framework of precedence and interpretation for determining whether it is mandatory or directory, when it is not explicitly stated. In fact we are using that framework to decide whether what the meaning will be of this Charter amendment.

Ms. Winn: I am not sure exactly what the question was.

Ms. Yukimura: The question is it possible that we would generate a lot of litigation out of this Charter amendment?

Ms. Winn: There is the possibility of litigation, I do not know if it is a lot. That is kind of hard to answer.

Ms. Yukimura: Without going through each one and looking at it.

Ms. Winn: Well, sure.

Ms. Yukimura: If we wanted to be more explicit then we could apply it just to deadlines?

Ms. Winn: Yes.

Ms. Yukimura: That would be a way of at least narrowing the uncertainty of impact. Even there alone it would be – I mean to really make sure what we were doing would be to look at every deadline and see what its impact is, but at least we would not be affecting in an unknowing way all the other shalls and musts.

Chair Furfaro: I think that is one of the reasons this thing surfaced is because it was about a deadline and it was about a deadline that affected the critical path of doing the budget just like the Council has a critical path right now that between tomorrow and May 15 if we do not pass a budget, what the Mayor submitted to us back in March 15 becomes the new budget. We are on a deadline specific.

There being no objections, the Council recessed at 3:11 p.m.

The Council reconvened at 3:15 p.m., and proceeded as follows:

Chair Furfaro: We are back from the tape change, and Mr. Bynum, you have the floor.

Mr. Bynum: I just want to thank you for this discussion, and I just threw out this example of Planning. So first, I disagree with what KipuKai is saying. I am not taking a position about the Planning Department but I think that is the kind of thing is likely to happen. I can tell you if we pass this and there was six (6) members sitting and a permit got approved and there was an activist group who did not like it, they would use this or vice versa. If a developer's permit got denied with six (6) members and then they would use this. I know better than most how absurd interpretations can cause litigation and serious consequence. You talked about the Charter, the code... somewhere in that hierarchy are administrative rules, correct?

Ms. Winn: Right.

Mr. Bynum: And I think the key thing you said was, to me anyway, the Charter is the governing document and is meant to be broad.

Ms. Winn: Correct.

Mr. Bynum: Well this Resolution is taking that broad document and making it more specific, correct?

Ms. Winn: Yes.

Mr. Bynum: And so I do have these concerns about – you also said, I wrote it down, yes, it could mean more lawsuits, I do not think we need to invite more lawsuits... thank you.

Chair Furfaro: This is going to come back in two (2) weeks.

Ms. Yukimura: Following up on Councilmember Bynum – staying with the Planning Commission example, if the one (1) vacancy was the Planning Commissioner who has to be from Labor or even from Business, there are a lot of grounds to argue that if that person is not sitting at the time of a decision and they are supposed to bring forth a perspective of the business community or the labor community and they are not there, then the “shall” has been violated and the intention of the Charter has been violated, and the decision is invalid. Because that is a Charter provision too that two (2) members come from the Labor community and two (2) be Environmental community and... two (2) Business...

Chair Furfaro: And one (1) At-Large.

Ms. Yukimura: Arguably, if those are vacant and there is this “shall consist” and it is a very polarized issue and there is a lot at stake, I can see somebody bringing a lawsuit.

Chair Furfaro: Okay on that note, I just do want to say how much we appreciate your information today, but I would like to defer this item. I will particularly focus on the question about items in the Charter that are date specific which is probably a separate solution in itself.

Upon motion duly made by Mr. Kuali'i, seconded by Mr. Bynum, and unanimously carried, Resolution No. 2012-22 was deferred.

Resolution No. 2012-23, RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO THE ESTABLISHMENT OF THE OFFICE OF THE COUNCIL ATTORNEY: Mr. Rapozo moved to approve Resolution No. 2012-23, seconded by Mr. Kuali'i.

Mr. Rapozo moved to amend Resolution No. 2012-23 as circulated, seconded by Mr. Kuali'i.

Mr. Rapozo: This is just a technical clarifying language regarding the service of legal process as well as the ballot question.

Ms. Yukimura: I think I like this wording better in terms of the wording of the ballot and I just want to make sure I understand the intention here. Instead of "Shall there be an Office of the County Attorney established within the Legislative Branch to provide Council with legal advice," it says "to give legal advice and representation to the Council, the Clerk, and their personnel instead of the Office of County Attorney." Basically, the new words are "instead of the Office of the County Attorney?"

Mr. Rapozo: The underline of the new words, yes.

Ms. Yukimura: But the new words between the old and new is basically "instead of the Office of the County Attorney," right?

Mr. Rapozo: Yes.

Ms. Yukimura: So it just clarifies that they shall be the sole representative; we would not be going for any reason to the County Attorney.

Mr. Rapozo: It also included representation in the text. It moved it around so it is more clear now – give legal advice and representation to the Council, Clerk and...

Ms. Yukimura: Okay and then in the paragraph above – service of legal process...

Mr. Rapozo: Just that all legal process that is served against the County goes to the County Attorney's Office, this just clarifies that except for the legal process against the Council, County Clerk and personnel employed by the Council and County Clerk, that would be accepted now by the Council Attorney.

Ms. Yukimura: Okay. So it is pulling the Council and Council Services out of the group that is served by the County Attorney for the purposes of legal counsel and it is showing now who instead the legal process would be served upon?

Mr. Rapozo: Correct.

Ms. Yukimura: Okay.

The motion to amend Resolution No. 2012-23 was then put, and carried by the following vote:

FOR AMENDMENT: Chang, Kualii, Rapozo, Yukimura	TOTAL – 4,
AGAINST AMENDMENT: Bynum, Nakamura, Furfaro	TOTAL – 3,
EXCUSED & NOT VOTING: None	TOTAL – 0,
RECUSED & NOT VOTING: None	TOTAL – 0.

Mr. Bynum: I am not going to be supporting this Charter amendment. I think that this is a very fundamental change of the Charter. It has been this way since the inception of the Charter. There has been tons of controversy over the years, but I think this really – this is such a fundamental change and I think it can cause all kinds of unintended consequences. I am not always happy with the County Attorney's opinions, I do not always agree, but they are opinions. I have been through several County Attorneys and some better than others, but I have always felt that they were adequate and I am very happy with the service provided by this current County Attorney, even though I am unhappy with him at times and unhappy with his opinions, but I accept that because they are opinions and I can make my own decisions. This just comes down to some people do not like this current County Attorney and want to put him in... but we have that opportunity every two (2) years.

Ms. Yukimura: Four (4) years.

Mr. Rapozo: Four (4) years.

Mr. Bynum: He is appointed by the Mayor, so at this next election, we do not have to vote on the County Attorney?

Ms. Yukimura: ...

Mr. Bynum: I stand corrected but we have that opportunity to vote to accept the Mayor's appointment or not. I just think this has many serious implications that we have not thought of and I am okay with the services provided by the last four (4) County Attorneys that I – and there is mechanisms to not accept their opinions, to override it. We even have a County Attorney who is willing to release their opinions and be held accountable and even come up here on the fly and have discussions on legal matters, so I will not be supporting this today.

Ms. Yukimura: I supported the amendment because I always want to make the bill the best it can be even though I might vote against it ultimately, and I will be voting against this because we are one (1) corporation and one (1) body, and it is true what Councilmember Bynum said that this would be a fundamental change that I guess I am not ready to make. I think that if we disagree with the County Attorney to such a level that we are willing to appoint Special Counsel and bring it to Court, we still have that option, but to have separate bodies, separate offices, and potentially on every small as well as big issue be able to argue between two (2) Attorneys, I think it would be a nightmare. You are setting

up a division here, you are setting up a separation, and you are setting it up institutionally and structurally. I think all it does is generate more division and separation, but if the disagreement is so large and so fundamental that we are willing to take it to Court, we still have that option. I would rather leave that option rather than create a whole new institution.

Chair Furfaro:

Any further comments before I speak?

Mr. Kuali'i:

I just wanted to say – no, Councilmember Bynum, you cannot say that it is just because people do not like this County Attorney, that is making it personal and our job is not about that. We are here to serve the people and we all want to best serve the people and if we feel like – if any of us feel like the assistance that we have been provided has been lacking and if we can get that assistance from somewhere else, that is our obligation to at least consider that, so how dare you say that. That is wrong, you said it, do not laugh. This fear tactic about unintended consequences, sure, it is not the unknown, there would be conflict but this – I have only been here a year and I would imagine at least everything I have seen, the lack of good representation, the lack of good information, the responses I have seen from each of you to the (inaudible) the inefficient support that we have received or not received from our attorneys too and that whole conflict about the County Attorney's Office serving the Administrations, serving the Council, serving all these different bodies where at times are conflicting. Yes, it is a difficult role for them to play but they have to give us, the Council, as much support and indifference as they do the Administration. Maybe this is just one way that Councilmember Rapozo saw as putting it forward as a solution and putting it to the people. Ultimately, it is the people, we decide who we are trying to work for and to get our job done the best that we can with all the support that we need and should have. Maybe this is not exactly the way to do it, but do not say we do not have a problem and it does not have to be addressed because we have a problem and it needs to be addressed. That is all I have to say.

Chair Furfaro:

Mr. Bynum, I will recognize you a second time but I want to speak first. I just want to point out and it is probably on the verge of sharing possibly my intent to introduce a new bill on May 23. The reason I wanted to share it with you folks is that I do say that there are times when the County Attorney who serves us all, and I think it is good that we are available to get information on a consistent basis what issues are and so forth, but there have been a number of situations where I do not think the County Attorney's Office can serve two (2) masters, two (2) clients within the same group, and I do not think putting up the Chinese walls is the way to do it. I think when conflicts do come up, it is difficult because we are one (1) corporation challenging different divisions or something of that nature. Without saying too much, I am hoping on the 23rd of May to submit a bill that would allow the Council at times to hire Special Counsel when we have those types of conflicts that come up. I do not want to go into too much dialog without saying that at this time, and that is why I cannot support setting up a separate office for the Council Attorney and I will not be supporting this.

Mr. Bynum:

Councilmember Kuali'i, I believe the record will show that you said Tim Bynum cannot say that, but with all due respect, I can say my opinion, I can speak the truth as I see it. I try to be cautious about that, but anybody who watches the Council closely, I think would share my opinion. This is a fundamental change, a very significant one that has many potential consequences, and I believe we already have – the Council can appoint itself Special Counsel whenever it chooses, I believe. So, we do have options. Thank you.

Mr. Rapozo: Did you want to go, Councilmember Yukimura? Okay. I just want to say, first of all, we definitely have a lot of problems. We have had more problems in this term than all the other terms that I ever served. I think oftentimes we disagree with County Attorneys of the past, but that is expected, but I think this term, it has been the worse I have ever seen. I do take offense to the comment and I know it was directed to me regarding this is just a member or some members not happy and want to... and Mr. Bynum, you cut yourself short before saying get rid of the County Attorney. If I wanted to get rid of the County Attorney, my amendment would have read, to give this Council the authority to remove the County Attorney. This does nothing to the County Attorney. It keeps the County Attorney at the Administrative side and it creates legal representation for the people on this side that is not influenced by the Administration that is not influenced by the Mayor who appoints the County Attorney. That is what this Charter amendment was about, it had nothing to do with anything personal. I really like our County Attorney, I think he is a cool guy, I just disagree with the way this term has evolved as far as – we have more controversy this term than ever before as far as the legal side of the house. It is an inherent problem that is shared by everybody else in the State that you have a Mayor that appoints the County Attorney that has to represent the County Council. I do not know what else to do, this is one (1) option or we can continue on here. We are going to hire Special Counsel and it takes five (5) votes to hire Special Counsel and oftentimes it is not cost effective to do so, so we just deal with it. I want to be able to have a Attorney, I want to be able to go to an attorney that can give us advice that is in the best interest of us. Not, oh well we do not want to go against the Administration's agenda, that is what we get. We cannot discuss Executive Session material here, but I think you all know what I am talking about. I can count and I will respect the vote of this body and we will just receive it.

Mr. Rapozo withdrew the motion to approve Resolution No. 2012-23, Draft 1, Mr. Kualii withdrew the seconded.

Mr. Rapozo moved to receive Resolution No. 2012-23, Draft 1, for the record, seconded by Mr. Kualii.

Chair Furfaro: Any further discussion, I want to share with you folks, my job whether you agree with it or not is to keep the decorum of this body. Let us not make items more complicated than we deal with in our relationships and I will just leave it at that. Mr. Bynum.

Mr. Bynum: When Councilmembers or other members make statements like I want an Attorney who does not represent the interest of the Mayor as opposed to us, you are disparaging the professional integrity of those people. I do not think those statements should be made likely and on this year we have had a lot of controversy really surrounding one (1) topic primarily, in my view and in my opinion which I am allowed in a democracy to express. I really take offense when people call people liars and come up here before the Council and make unfounded allegations about misconduct and that is part of what we have experienced this term. I want to go on record saying I have faith and the integrity of our County Attorney and his deputies that have come here and it is emotional to me to hear this disparaging remarks directed at professionals in our County.

Chair Furfaro: Again, my comments if I can, please, we need to first depend on our ability to work with one another. Mr. KipuKai.

Mr. Kuali'i: Mr. Chair, thank you. It is not in keeping with the decorum to interpret our statements as disparaging to any member within the County and I just wanted to say to correct for the record that if I did and maybe the words are that I said you cannot say that Councilmember Bynum cannot say that. What I meant was that you should not say that. It is not in serving to the decorum to this body and it actually creates what you have said - a toxic environment. I just think we should have a little bit more respect for each other and not make accusations that says, some people just do not like this County Attorney and that word for word is what you said, so you are saying that we want to - and what Councilmember Rapozo said about removing or whatever, it is not even true. To take it to the level of personal, that is not what we are here to do. What is personal to me is that I have an obligation to serve the people and I only know one (1) way to do it and it is from my heart and giving everything I have. For you to misrepresent that and you cannot at times after we do something, try and paint it the way that you want to. You should not, that is not fair, and that is not in good decorum and that is not just how we can best work together.

Chair Furfaro:
vote.

Let us leave it at that. I want to call for the

The motion to receive Resolution No. 2012-23, Draft 1, for the record was then put, and carried by the following vote:

FOR RECEIPT:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST RECEIPT:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Resolution No. 2012-36, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE FIRE COMMISSION (*Michael Y. Nagano*): Mr. Bynum moved to approve Resolution No. 2012-36, seconded by Ms. Yukimura, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST APPROVAL:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Resolution No. 2012-38, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE FIRE COMMISSION (*Clifton J. Miranda*): Mr. Rapozo moved to approve Resolution No. 2012-38, seconded by Ms. Yukimura, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST APPROVAL:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Resolution No. 2012-39, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF REVIEW (*Benjamin E. Lizama, Jr.*):

Mr. Bynum moved to approve Resolution No. 2012-39, seconded by Mr. Chang, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2012-40, RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO THE TERMS SET FOR COUNTY COUNCILMEMBERS

Chair Furfaro: I think maybe Council Vice Chair Yukimura wanted to speak on this, but she stepped out, and if you folks do not mind, I am going to give a five minute recess because I believe she wants to speak on this.

There being no objections, the Council recessed at 3:43 p.m.

The Council reconvened at 3:50 p.m., and proceeded as follows:

Chair Furfaro: I do want to announce that Mr. Chang has left me an attendance item that indicated that he had prior commitments, but will be back for the public hearings held at 5:00 today.

Ms. Yukimura: We are on Resolution No. 2012-40?

Chair Furfaro: Yes.

Ms. Yukimura moved for passage of Resolution No. 2012-40 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 23, 2012, seconded by Mr. Bynum.

Ms. Yukimura: This is a Resolution that proposes a Charter Amendment changing the term of Councilmembers from two (2) years to four (4) years. My reason for proposing this is that the Council is in part like a Board of Directors of a large public corporation with an Operating Budget of a hundred eighty plus million dollars and over a thousand County employees and we make wide and far ranging decisions. Our main job is to pass an annual budget, to pass laws that institute good public policy, and to conduct oversight over the operations of the County, and to do this in a format where we are running for election every other year, I do not think is conducive to good governance and this would not apply to this Council. If it passes in this election, it would apply to the next Council elected in 2014. We are not acting on our own terms. If the people of this island decide to change the term from two (2) to four (4), we would have to run for those – for that term. I know from experience that major legislation which is part of our primary duties, bills, like bills on the shoreline setback, on vacation rentals, on farm worker housing have taken an average of four (4) years to actually develop and bring to fruition, so you can see that the work is multiyear work, and to have a two (2) year term also brings out the negative aspects of elections which is the number one (1) cost, the more often there is an election, the more it costs and that it discriminates against those who do not have the (inaudible) to run. Also, in its worst case scenario promotes a lot of public posturing that does not promote good dialog, so in all those ways and we would still have the accountability of one (1)

recall if there is a public official who violates their public trust. There is a provision in the County Charter to recall an elected official and also there is the accountability of elections, except that it would come every four (4) years now, instead of every two (2) years if this Charter amendment passes. I think it allows the time necessary to do a good job but it keeps the accountability that comes with periodic elections, and in fact the public has more time to judge the work of a Councilmember. For these reasons, I would like to propose it for the ballot but I am also very glad that we are having a public hearing in two (2) weeks because that would allow us to hear what members of the public think about this proposal and then we can vote as to whether or not to put it on the ballot.

Mr. Rapozo: I am trying to do the math in my head, but the last time the voters voted, was that in 2006?

Chair Furfaro: 2006 on the...

Mr. Rapozo: 2006 and then it became effective on 2008?

Chair Furfaro: Yes.

Mr. Rapozo: And then that was where we went to the initial term limits for two (2) year terms?

Ms. Yukimura: Yes.

Mr. Rapozo: My only – this is a double-edged sword – two (2) or four (4) years, what works, what does not work. I have always said two (2) years benefit the people because they get to pick their Council every two (2) years, four (4) years benefit the incumbents because you only have to run every four (4) years. The other thing that this does not show, I do not believe anyway, it does not reflect any staggering of the terms. We cannot have straight terms without staggering; we cannot make that mistake again. We need to implement staggered terms if we are going to go on a four (4) year cycle because you could technically have a full slate of new people, so we missed it the last one (1), and we should not miss it this time. My question is as we go to the public hearing, do we need to amend prior to the public hearing? We would have to amend so that the public could comment, because if there is a substantial change and again that is something that the Attorney would have to determine, if it is a substantial change then we would have to hold another public hearing. So that is my concern, I do not see the staggered terms. The other real concern I have is the first term limit cycle has not even gone through yet. This would reset the clock, so again we would not have term limits, it would pretty much erase the term limits of the first cycle. I would implement, I would like to see language in here that would basically, it would not reset the clock, in other words, the existing terms limits would be in existence. I am not sure how we could word that but that would be my recommendation that you put that in there. Let us honor the people's choice back in 06, they voted for eight (8) year term limits, and I think it is really, I do not think it is proper for us to go every eight (8) years or six (6) and do a term limit change so we reset the clock, so the public never gets that activity. They voted for term limits in 2006, that is what they wanted, and by passing this as it is written, we remove that term limits from 2006 what they voted on, and again we are going to reset the clock. That is the two (2) amendments that I suggest Mr. Chair, I would highly recommend that get done before the public hearing, that number one (1) we put in the staggered terms and we can copy Honolulu's – when they changed theirs. It is really the top and I do not

know how it is over here, we only have seven (7) people, so the top three (3) would be four (4) year terms, the bottom four (4) would be two (2) year terms, and then after that those two (2) year terms would be four (4) year term and then you would have a staggered Council. The other language is that the terms limits – that if this should pass that it would not affect the term limits that was approved in 2006.

Mr. Bynum: I did not know we were going to have discussion on first reading, but I want to agree with Councilmember Rapozo that those are the two (2) issues that first came to my mind. I feel like the staggered terms would be – the last time this was on the ballot, it came really close to have staggered terms. My memory was that the way that would work was in the first year, say the next election, that the top three (3) or four (4) got four (4) year terms, and the other Councilmembers had two (2), that way for the public every two (2) years, there are Council vacancies that are competitive, yet allows a four (4) year term. The term limits get a little complicated because you have different Councilmembers on different timetables, and so for instance, I will use myself as an example, if this passes and I was competing for a four (4) year term, that would take me beyond the term limits that was set in 2006, but I think that clearly has to be fully disclosed to voters that this is going to impact term limits. I do not know a way offhand that there may be language to do it, but Mel, you hit on the two (2) key issues and I agree that I would not vote for it if the terms were not staggered, personally. If they were, I would. I think it would be a benefit to our community to have Councilmembers have a four (4) year term as long as there were competitive seats every election and with staggering, you can accomplish that.

Ms. Nakamura: I would have to agree with Councilmember Rapozo that staggering is a good thing and I think honoring the eight (8) year term limit set by the voters in 2006 would be a good way to go about amending this resolution. One (1) way to look at it is to do the staggering based on the number of years left for the existing Councilmembers' terms and that is just one (1) option. For example, for myself, in 2014 if I am still here, I would have served two (2) terms, so that is four (4) years, so maybe I should only be allowed to serve an additional four (4) year term, that would be the eight (8) year term. I should only be eligible for another four (4) year terms at that point in time and not the full two (2), four (4) terms. So me, Mel and JoAnn, we might be in that same position, since we got on at the same time. We would need to think about that and others who might be at that tail end of those terms, if we do staggering, maybe that is where it might be set up that way. I think a lot more thought needs to be put in this but I think this is a good discussion to have.

Ms. Yukimura: Yes, I think the staggering idea is worth really looking at. When I looked at it, for one (1) thing I did not see that anywhere in the history where there has been a major cleaning of the Council, where seven (7) members have been changed and they are new Councilmembers. Given the format where we are all elected by the whole island, I did not think there was that much of a danger of a brand new Council, a hundred percent new which is usually the rationale for staggering. There is the idea that it would be good to have some positions up every two (2) years and so for that reason, staggering may be considered. In terms of terms of office, we can certainly – I do not think we can clue it to individual Councilmembers because, I mean set the seats – the two (2) year terms and the four (4) year terms to individual Councilmembers, because you just do not know who will be elected into those slots. You are personalizing something and I do not know that we can do that in the law, but I am sure that there is a way to say that – well I am not sure. We need to try to put it in writing to see how it

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it has on term limits, you also hear from others – from people in the public about district seats versus At-Large seats and having both or maybe even that thing about two (2) years and four (4) years, maybe having both. All these seats are seven (7) At-Large but they are all not labeled, if you will, not numbered. In other places you have seats that are designated, I think that is the word that I was looking for, where this is that seat and maybe they are all seven At-Large seats but this is seat number one (1), this is seat number two (2), so during the campaign time when people run for a seat, they are actually run for a seat. They do not just run to get into the top seven (7). Now, that might make it harder for a newcomer like myself because you do not have that long, established political career to run on and maybe a newcomer would not decide to run against someone like Vice Chair or Chair – being a former Mayor and everything but they would all decide to run against me but it is a way to look at it. It is the way that the voters might have more of a choice. When you were saying the thing about a recall, it very hard to do, you got to really be messing up before somebody recalls, you probably be in jail, just so much things would have to happen before you get recalled but in every two (2) years, candidates could actually decide to run against you as an individual then the voters would have that kind of a choice and say in democracy and there is just other things to consider too when you are just looking at four (4) years versus two (2) years.

Chair Furfaro: I do believe that if we pursue about the issue about staggered terms and we do speak about the ideas of carrying over the terms that was set by the last Charter amendment that this would be a substantial change, just first blush. Considering that, though, if we decided to come back and have this in the proper form in two (2) weeks, that would bring us to May 23, if it comes to May 23 and it is amended so that there is a public hearing on May 30 and then a second reading on June 7 and it passes, will we meet the deadline set by the Charter Review Commission?

RICKY WATANABE, COUNTY CLERK: Chair, we will need to go check the timeline.

There being no objections, the Council recessed at 4:14 p.m.

The Council reconvened at 4:20 p.m., and proceeded as follows:

Chair Furfaro: Before we go any further and I know I am going to recognize a couple of Councilmembers, the fact sheet that we received indicates that June 13 is the Council deadline for a first reading of a proposed Charter Amendment, so even on the revised schedule that I shared, we still make it. On the policy about substantial change, I think the decision is really the body's because it is our policy and if we wanted to debate how much you thought the policy has affected the bill, the nature of the bill and the title of the bill that is a hard call.

Mr. Rapozo: Mr. Chair, all I was going to suggest was that we refer this to the Committee of the Whole next week, and I should be able to have my amendments prepared by then, and then we can vote on it in the Committee and then get it out of Committee into the full Council in two (2) weeks – the 23, and then we can pass it out on first reading and set the public hearing.

Chair Furfaro: Let me just get clarification again from the Clerk, now should we do it in the Committee of the Whole or should we actually schedule next week a Special Council Meeting?

Mr. Watanabe: Chair, you can refer it to the Committee of the Whole to do the research and the drafting of amendments.

Chair Furfaro: And again, just because it is a Charter amendment I want to be real procedurally correct, so, we can put it in the Committee of the Whole next week? Okay, thank you.

Ms. Yukimura: I think the schedule proposed by Councilmember Rapozo is a good one. Just to clarify, then we would work on amendments in the Committee of the Whole next week, move the amendments out or the amended proposed Charter amendment out for first reading on the 23 and set a public hearing for the 30?

Chair Furfaro: Yes.

Ms. Yukimura: And then have second reading on our June 13 meeting because I think the 7 is a Committee Meeting.

Chair Furfaro: Oh, okay, you might be right and the 13 is the deadline.

Ms. Yukimura: For first reading and we will be on second reading on that case, so we should be okay.

Mr. Watanabe: If you refer to the Committee of the Whole for next week, it will be taking us to May 16 and come back to the full Council on May 23 for first reading.

Chair Furfaro: Yes.

Mr. Watanabe: And I will send it out to public hearing June 13 – we would have to schedule a possible Special Council Meeting – oh, we do have a Special Council Meeting schedule on May 30?

Chair Furfaro: Yes, we do have a Special Council Meeting as it relates to the budget, so we can piggyback what is in the Special Council Meeting on the 30th is what I was referring to. We can do it that way right?

Mr. Watanabe: Yes. We could piggyback on that bill on that Special Council Meeting on May 30.

Chair Furfaro: Sounds like a plan.

Ms. Yukimura: It does sound like a plan but my question is – is there a way today to refer to Committee Meeting and schedule a public hearing so that we can at least get word out about the public hearing earlier, or is it advisable to wait until the 23, but then it would just mean one (1) week notice for the public hearing on the 30?

Mr. Watanabe: I believe it is a much cleaner track to go the other route.

Ms. Yukimura: To pass it on first reading on the 23 and set the public hearing for the 30?

Mr. Watanabe: Yes.

Ms. Yukimura: Okay. Alright, that is fine.

Mr. Kualii: Just one (1) quick thing, in addressing the staggered terms, I may have an amendment that is different from Mr. Rapozo's but I will talk to him about it after.

Chair Furfaro: And if you could make sure you prepare it by the time it comes to the Committee of the Whole.

Mr. Kualii: Absolutely.

Chair Furfaro: So it seems like we have a reasonable, acceptable schedule.

Upon motion duly made by Ms. Yukimura, seconded by Mr. Chang, and unanimously carried, Resolution No. 2012-40 was referred to the Committee of the Whole.

Resolution No. 2012-41, RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO BUDGET PROCEDURES: Ms. Yukimura moved for passage of Resolution No. 2012-41 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 23, 2012, and that it thereafter be referred to the June 13, 2012 Council Meeting, seconded by Mr. Rapozo.

Ms. Yukimura: This Resolution proposes to remove the supplemental budget process that we are in the midst of right now for the annual budget setting. I am proposing this because it makes our annual budget process very dysfunctional in my opinion. We have five (5) days to consider a new budget. There is a public hearing schedule that is virtually meaningless because we cannot make changes after the public hearing and the public itself has very little time to really understand proposals too. No other County has this supplemental budget process, it allows a lot of maneuvering in many ways, it does not hold the Administration accountable to really do a good budget job in the first budget that they send to us. It sends us scrambling to understand changes and so forth, it is not a very good way to set a huge budget, a huge impact to our community, and so I am proposing that we remove this which would go back to the original annual budget process that was in the Charter. It would be similar then to all the other Counties as well but the bottom line is that it would make better budget process.

Chair Furfaro: Any further comments?

Mr. Rapozo: I agree with the Resolution, I agree with the Charter amendment. I would only hope that the people will vote and get this passed. Like you said earlier, Councilmember Yukimura, we are the only County that has this second shot, I do not understand how this came about, I am sure some of the veterans on this Council and the staff could probably let us know. What I saw in this budget was – it gives the Administration a strategy and we saw it throughout the budget where oops, that was not supposed to go in until the May 8 submittal which means they already knew what they wanted to put in before March 15 but decided to holdout until May 8, that was troubling. It was very evident in this budget session as opposed to any of the others that I have been in.

This budget is very confusing and I think it is going to take a lot of effort by all of us in the next few days, but all of the other Counties, they submit their initial budget and then the Council gets to address it and have the public hearings and make the necessary adjustments the Council sees fit. It is very unfair, we got the budget yesterday afternoon late, and it is a brand new budget, we got new revenues, expenditures, we got more positions, we got equipment – so it is a brand new budget. All of the budget review that we had, although I think it did some good, we start all over and now we got four (4) days to make the decision. I am hopeful that the public will see, and unless you lived this, it is very hard to explain this to the layperson but we truly need one (1) budget submittal in March and that is it. Our poor staff has to dissect two (2) sets of budgets; they got to go and do the analysis after yesterday's submittal. Obviously I am going to be supporting this and I am going to be telling everybody I know to support this because this has to happen and it has to happen soon.

Mr. Bynum: I am happy to say that I agree with Councilmember Rapozo's comments completely and just to highlight a couple of things. It was very apparent this budget that it was used tactically, and I want to give an example, I got the Mayor's budget last night, it is this thick, I spent a few hours with it, and tomorrow morning we are going to sit down and start making decisions. One of the things that is in the Mayor's budget is a revenue neutral proposal – he is suggesting changing tax rates, one of them for hotel and resort – revenue neutral meaning hotels, resorts, you pay the same tax bill you did last year. It is not going up, the rates are going up, so it does not go down for the fourth straight year and I am getting emails, do not raise our taxes, it is going to cost jobs, we are a struggling industry. The Mayor is not getting these emails because he put forward the proposal last night, and tomorrow morning it is the Council that has to make the decision. Every other County goes through a budget process where the Mayor submits one (1) budget and so I am very much in support of this and I agree with Councilmember Rapozo also that it would behoove us to educate the public because this is going to be a difficult one (1), I do not know how the language would be on the Charter and that is something we would have to work out. This proposal has my full support.

Mr. Kualii: I agree with everything Councilmember Bynum just said and when Vice Chair Yukimura did the overview at the start, I think the most important thing she said was that this would allow us to have more time to do our work and to do a more thorough job but more importantly I think it also allows time for us and for the people to engage and participate in this process. I do not know if we will see a lot of people tonight, but the story was just in the paper today, and the turnaround for the public to participate in what the Mayor just put forward, most of the public do not even know yet. This is very important, I think, to make a better budget process and with a better budget process, we would end up with a better budget and perhaps in that cycle it would really be the people's budget where they could actually participate.

Ms. Nakamura: Thank you, Councilmember Yukimura, for putting this on the agenda.

Chair Furfaro: I would just want to say to everybody that because we have compressed time, I will be supporting this. We need more time, we cannot end up being where we are at, I will be passing out an order of departments for being reviewed tomorrow, and we have four (4) days to go through it. I just want to say, we need to be real focused Thursday, Friday, Monday, Tuesday and

once we get through a department – we are not going back because the reality is if we do not end up with a budget according to the timetable, what they submitted in March becomes the rule. I think this amendment allows us the appropriate time and I will be handing out a packet to start tomorrow morning, but we cannot always be on this kind of critical path to get to where we want to be. Thank you for introducing this, Councilmember Yukimura.

Ms. Yukimura: You are welcome. I was just corrected by staff, the Big Island does allow for modification of the budget, so I was incorrect to say that no other County does. I also want to ask our staff to highlight the deletions in the Charter amendment. This is not a substantive change, it just helps people identify what the changes are because they are mainly brackets. If we can in the versions that we give out to the public, if they are interested and in the printing of this Resolution subsequently, if we can highlight the change, I think it will help people understand what we are proposing.

The motion for passage of Resolution No. 2012-41 was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2435) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, KAUA'I COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW ARTICLE RELATING TO ALARM SYSTEMS: Mr. Rapozo moved for passage of Proposed Draft Bill No. 2435 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 23, 2012, and that it thereafter be referred to the Public Safety & Environmental Services Committee, seconded by Mr. Kualii, and carried by the following vote:

FOR PASSAGE:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, COUNTY ATTORNEY: Good afternoon Council Chair, Councilmembers, Al Castillo, County Attorney. The next matter for your consideration is ES-542.

ES-542 Pursuant to HRS sections 92-4, 92-5(a)(4), and section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on the retention of special counsel to represent the Office of the Prosecuting Attorney regarding the Pohaku Program and related matter. The briefing and consultation involves consideration of the powers, duties, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo moved to convene in executive session for ES-542, seconded by Mr. Chang.

Chair Furfaro:

Members, questions?

Ms. Yukimura: I guess I have a question about the legal sufficiency of this notice under the Sunshine Law because it does not say why there is a need to retain Special Counsel.

Mr. Castillo: The legal sufficiency of the posting is sufficient because it provides the public with an understanding of what will be exactly will be discussed. That is the reason why we are going into executive session where I will give you legal guidance regarding the reasons why Special Counsel is needed.

Ms. Yukimura: Well, but it does not say – in your words – what exactly is to be discussed because we do not know if this is to represent the Prosecuting Attorney in a criminal matter or a civil matter or... we do not have no idea.

Mr. Castillo: And that is the reason why we are going into executive session; however, the subject matter itself is appropriate and broad enough and specific enough to give the public good indication of what will be discussed in executive session. The reason for – why we are requesting, will be discussed in executive.

Mr. Rapozo: Al, is it not true that your office has conflicted out?

Mr. Castillo: Our office request – the black and white legality of the matter right now is unless Special Counsel is – unless this body authorizes Special Counsel and Special Counsel does actually come onboard, up until that point in time we still are legally to represent the Office of the Prosecuting Attorney.

Mr. Rapozo: Correct, and that is the way I read this is that our briefing is to get the briefing from you so that we can come out and vote for the funds so that the Office of the Prosecuting Attorney can be represented in all matters pertaining to the P.O.H.A.K.U. program?

Mr. Castillo: Yes, and the reasons for the conflict of interest, that we will be telling you will be in executive session.

Mr. Rapozo:

Correct, I understand, thank you.

Ms. Yukimura: But to be clear, you are not in conflict in terms of advising us on our liabilities and issues, right?

Mr. Castillo:

Yes.

Ms. Yukimura: There is no conflict there, you are our attorney?

Mr. Castillo: That is correct.

The motion to convene in executive session for ES-542 was then put, and carried by the following vote:

FOR CONVENING IN EXECUTIVE SESSION:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST CONVENING IN EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Ms. Yukimura: Mr. Chair, I just want to state for the record that I think there is still a potential conflict of interest on Mr. Kuali'i's part, I am sorry I have to bring this up, but I think there might be.

Chair Furfaro: So noted. We are going into executive session.

The meeting was called back to order, and proceeded on the following:

Chair Furfaro: We are back from our executive session and I would like to have the item read which is the last item on our agenda today, it is item C 2012-152.

C 2012-152 Communication (04/26/2012) from the County Attorney, requesting Council approval to expend funds up to \$30,000.00 to retain special counsel to represent the Office of the Prosecuting Attorney regarding the P.O.H.A.K.U. Program and related matters: Mr. Rapozo moved to approve as amended to reflect \$15,000 to be used in civil matters as it relates to the P.O.H.A.K.U. program, seconded by Mr. Chang.

Ms. Yukimura: First a question for Mr. Castillo. Would the Attorney's Office be entitled to counsel if the conduct for which counsel is provided is not within the scope of work of the Prosecuting Attorney's Office?

Mr. Castillo: No, if it is not within the scope of the employment, no; however, for the purposes of a civil matter in the P.O.H.A.K.U. program, yes.

Ms. Yukimura: But even within the scope of a civil matter, if it is not within the scope of the County Attorney's duties...

Mr. Castillo: Prosecuting Attorney's duties.

Ms. Yukimura: Prosecuting Attorney's duties, I am sorry, then - would that be entitled to Counsel provided by the County?

Mr. Castillo: No.

Ms. Yukimura: So if it is found not to be – if the conduct is found not to be within the scope of the Prosecuting Attorney's duties, then is this money then refunded to the County?

Mr. Castillo: I do not want to – at this point in time, I do not want to speculate, but it is true that if it is not within the scope but the parameters of representation is only for civil matters regarding the P.O.H.A.K.U. program. The way that I read what I know about this case is I cannot see it – the conduct not being within the scope takes it into a criminal matter and not a civil matter, I do not want to speculate on where this goes but it is safer for me to say that the request is simply for matters regarding the P.O.H.A.K.U. program and it is all civil.

Ms. Yukimura: Is it for ethics violations as well relating to the P.O.H.A.K.U. project?

Mr. Castillo: Well...

Ms. Yukimura: Well this is about how is this money going to be used if we appropriate it? Can it be used for that purpose?

Mr. Castillo: Whatever investigation occurs regarding the P.O.H.A.K.U. program is what is going to happen. Whatever the outcome of the investigation is, is the outcome.

Ms. Yukimura: But Mr. Castillo, if the County employee is under investigation for an ethics violation, are they entitled for Special Counsel?

Mr. Castillo: Then the question becomes whether or not that County employee at the end of the day is found to have violated any ethics or any Charter provisions, but at that point in time, we can make the determination and I do not want to speculate right now, but we can make the determination at that point in time whether or not legal representation from the County was appropriate.

Ms. Yukimura: And...

Mr. Castillo: I do not want to speculate.

Chair Furfaro: Excuse me, I am going to recognize Councilmember Nakamura.

Ms. Nakamura: I would like to call for the question.

Ms. Yukimura: Mr. Chairman?

Chair Furfaro: Yes.

Ms. Yukimura: I have a very important question about this motion that I think is relevant. Does this apply to the Prosecutor as an individual Prosecutor and other deputies or the Office of the Prosecuting Attorney?

Mr. Castillo: This is to the Office of the Prosecuting Attorney and Special Counsel for that Office. I am not in control of any matters thereafter.

Ms. Yukimura: But this is not for the Prosecuting Attorney, herself? They may need – an office may be separate from the individuals within that Office, so is it for all of that?

Mr. Castillo: No, no. This is for the Prosecutor's Office in reference to the P.O.H.A.K.U. Program. In the event that the analysis – the legal analysis regarding representation goes further than that, we will cross that bridge, if and when we get there... but I do not want to speculate.

Chair Furfaro: Thank you for that answer about crossing that bridge when we get there. I am going to call for the question after I recognize Mr. Bynum.

Mr. Kualii: Chair, can we call for the question?

Chair Furfaro: I think we have Councilmembers leaving here in a few minutes and we are going to call for the question after Mr. Bynum asks his question.

Mr. Kualii: Can you make sure Mr. Bynum is brief?

Mr. Bynum: Excuse me, I have a right to ask a question.

Mr. Kualii: You go on and on.

Chair Furfaro: Members, I cautioned you before, the decorum of this body is under my control, this is my statement, Mr. Bynum, you have an opportunity for a question and then I am going to call for a question.

Mr. Bynum: Well I have about three (3) and do I have the floor?

Chair Furfaro: Get started. I gave you the floor, get started.

Mr. Bynum: Do you agree that this is a very unusual circumstance?

Mr. Castillo: Yes, it is a very unusual circumstance.

Mr. Bynum: During the budget hearings, we were not allowed to ask questions about P.O.H.A.K.U. When we sent questions in writing, the Prosecutor responded that she could not answer until she had Special Counsel. Will this facilitate us asking the questions that we wanted to ask programmatic about the P.O.H.A.K.U. program?

Mr. Castillo: It will facilitate it to the point where you may ask any question that you want as a Councilmember, the response that you get, I have no control of.

Mr. Bynum: I understand that. You have already said that this is a unusual circumstance, was part of what led to these allegations that were made publicly by the Prosecuting Attorney in a widely circulated email and on the Council floor during her budget presentation?

Mr. Castillo: Yes.

Mr. Bynum: And the County Attorney's Office is recommending that we approve these funds?

Mr. Castillo: Yes please.

Mr. Bynum: Thank you.

Chair Furfaro: We will call for the vote now and we will restate the amended request is for \$15,000.00 for civil matters associated with the Prosecutor's Office within the scope of the Prosecutor's duties.

The motion to approve C 2012-152 with an amended amount of \$15,000.00 for civil matters associated with the P.O.H.A.K.U. program, was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Chang, Kualii, Nakamura, Rapozo,
Furfaro

AGAINST APPROVAL: Yukimura
EXCUSED & NOT VOTING: None
RECUSED & NOT VOTING: None

TOTAL - 6,
TOTAL - 1,
TOTAL - 0,
TOTAL - 0.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 8:15 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

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